1823.

SUPREME COURT OF THE UNITED STATES.

No. 193.

RALPH S. AND JOHN FRETZ, APPELLANTS,

vs.

JOHN C. BULL, WM. J. McCLURE AND THOMAS S. FOREMAN, Partners trading under the name and style of BULL & Co., for the use of the Fireman's Insurance Company of Louisiana, LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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UNITED STATES CIRCUIT COURT,
Fifth Circuit and Eastern District of Louisiana:

JOHN C. BULL *et al.*, Appellees,
vs.
R. S. & JOHN FRETZ, Appellants. } No. 1832.

Pleas and proceedings before the Honorable Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, at a Circuit Court of the United States in and for the Fifth Circuit and Eastern District of Louisiana aforesaid, being the December term of said court, held at the city of New Orleans aforesaid, on the 11th day of January, A. D. 1850.

Be it remembered that heretofore, to wit, on the 20th day of April, in the year of our Lord one thousand eight hundred and forty-nine, R. S. and John Fretz, by their proctors, Elmore and King, Esqr's, filed in the clerk's office of this court a certified transcript of the record and proceedings in the United States District Court for the District of Louisiana, in the case of John C. Bull *et al. vs.* R. S. and John Fretz, No. 6479, on the Docket of said District Court, which is in the words and figures following, to wit:—

UNITED STATES DISTRICT COURT,
District of Louisiana:

Sitting in Admiralty.

JOHN C. BULL *et al.*
vs.
R. S. & JOHN FRETZ. } No. 6479.

Be it remembered that at the February term, to wit: on the 14th day of March, A. D. 1848, John C. Bull, W. J. McClure and Thos. S. Foreman, came into the said court, and there by their proctor, L. Hunton, Esq., filed the following libel, to wit:—

Libel filed March 14th, 1848.

UNITED STATES OF AMERICA,
District of Louisiana, &c.

To the Honorable Theodore H. McCaleb, Judge of the District Court of the United States within and for the District of Louisiana.

The libel and complaint of John C. Bull, and William J. McClure, and Thomas S. Foreman, partners, trading under the name and style

of J. C. Bull & Co. of Kentucky, who bring this suit for the use and benefit of the Firemen's Insurance Company of Louisville against Ralph S. Fretz and John Fretz, of New Orleans, late owners of the steamboat Memphis, in a cause of collision, civil and maritime, and thereupon the said J. C. Bull & Co. articulately propound as follows:

First. That in the month of March, in the year 1847, a certain flat-boat, whereof Alhira Galusha was master, called and designated as "Flat-boat No. 2," was at the port of Madison, Indiana, and destined on a voyage from thence to the port of New Orleans, with a large and valuable cargo on board; and was at time a light, strong, staunch and well-built flat-boat, well manned and provided, and in every respect in good order and condition for the voyage.

Second. That in the said month of March, the said flat-boat, provided and manned as aforesaid, departed from Madison, and after stopping at several points to take an additional cargo in pursuance of her original purpose, proceeded on her voyage, and in the prosecution thereof, arrived at a point in the Mississippi River opposite Prophet's Island, in the State of Louisiana, about twelve miles above Baton Rouge, within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court; on the eleventh day of April, 1847, between the hours of nine and ten o'clock in the forenoon, and whilst proceeding down the stream with great care, in the usual and proper channel, the said flat-boat was drawn and forced by an eddy in towards the shore, and whilst there and endeavoring to get out of said eddy, the steamboat Memphis, whereof Fretz was then master, and the said Ralph S. Fretz and John Fretz were owners, was descending the river, and might with proper care and skill, with great ease have kept clear of said flat-boat, and notwithstanding the said flat-boat could not possibly get out of the way of the said steamboat, the said steamboat Memphis was ran with great force and violence foul of and against the said flat-boat, striking her on her starboard quarter, causing to fill rapidly, capsize and sink in less than four minutes, by means whereof the cargo of said boat, except sixteen barrels and one keg of lard, was entirely lost—the said lard having been saved after it was thrown into the river by the collision.

Third. That the said collision occurred without any fault on the part of those in charge of the said flat-boat, and was occasioned solely by the want of care, skill or competency of the officers and crew of the said steamer "Memphis," and might easily have been avoided if they had used proper care and precaution.

Fourth. That the said flat-boat before and at the time of receiving the said damage was light, staunch and strong, and at the time of said collision had on board as part of her cargo 1650 sacks of corn, 4125 bushels, of the value of 85 cents per bushel, equal to three thousand five hundred and six dollars and twenty-five cents—also 158 sacks of oats, 353 bushels, of the value of 55 cents per bushel, equal to an hundred and ninety-four dollars and fifteen cents;

also 17 barrels of lard, 3813 pounds, of the value of 8¾ cents per pound, equal to three hundred and thirty-three dollars and sixty-three cents, making the value of the whole of the cargo four thousand and thirty-four dollars and three cents ($4034 03), of which libellants then were the true and lawful owners, and all of which was totally lost, together with the flat-boat, her tackle, apparel, &c., of the value of eighty dollars.

Fifth. That immediately after the collision mentioned in the second article of this libel happened, the captain of said flat-boat, together with several other men, jumped into their skiff, and, with the assistance of the steamboat, succeeded in picking up the aforesaid sixteen barrels and one keg of lard: they then got on board of said steamer Memphis and proceeded after the wreck, which had risen and was seen floating bottom upwards; that they succeeded in catching and fastening said flat to the steamer, which towed said flat-boat down the river some ten or twelve miles, when she was run in shoal water and made fast to the shore, and, finding it impossible to save the flat-boat or any other portion of the cargo, the captain sold the wreck as she lay to the highest bidder for forty dollars. Libellants further aver, that by reason of said collision as aforesaid, they have sustained damages to the amount of four thousand and thirty-four dollars and three cents, and eighty dollars, the value of said flat-boat.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this Hon. Court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore, the libellants pray that process in the form of law according to the course and rules of this Honorable Court, in causes of admiralty, may issue against the said Ralph S. Fretz and John Fretz, and that they be cited to appear and answer upon oath all and singular the matters herein propounded; and that this Honorable Court would be pleased to pronounce for the damages aforesaid, and decree such other relief as law and justice may require.

(Signed) L. HUNTON, *Proctor.*

JOHN C. BULL,
WM. J. McCLURE,
THOS. S. FOREMAN,
Libellants.

John C. Bull, being duly sworn, states, that to the best of his knowledge and belief, the allegations set forth in this libel are true.

(Signed) JOHN C. BULL.

Sworn to and subscribed before me, this 14th day of September, 1848.

(Signed) N. R. JENNINGS,
Clerk.

Judge's Order on Libel.

Let process issue as prayed for.

(Signed) THEO. H. McCALEB,
U. S. Judge.

And thereupon the following citations were issued from the clerk's office, (issued March 14th, 1849.)

Citation.

United States District Court, sitting in and for the District of Louisiana.

To JOHN FRETZ:

You are hereby summoned to comply with the prayer of the annexed libel, or file your answer thereto in writing, in the office of the District Court of the United States for the District of Louisiana, in the city of New Orleans, within ten days from service thereof, or judgment will be given against you by default.

[SEAL.] Witness the Honorable Theo. H. McCaleb, judge of the said court, at the city of New Orleans, this 14th day of March, 1848, and 72d year of the Independence of the United States.

JOHN C. BULL *et al.*
vs.
R. S. FRETZ AND JOHN FRETZ. } No. 6479.

N. R. JENNINGS,
Clerk.

(Signed) by A. BAISBLANC,
Deputy Clerk.

Marshal's Return on Citation.

Received 14th March, 1848, and on the same day I served a copy of the within citation and plaintiff's petition on the within-named John Fretz, in the following manner, to wit:—

By handing the same to him in person at the city of New Orleans.

Returned March 15th, 1848.

For W. F. WAGNER,
U. S. Marshal.

(Signed) J. H. RINEHEART,
D'y U. S. Marshal.

Citation.

UNITED STATES DISTRICT COURT,
Sitting in and for the District of Louisiana.

To R. S. FRETZ.

You are hereby summoned to comply with the prayer of the

annexed libel, or file your answer thereto in writing, in the office of the District Court of the United States for the District of Louisiana, in the city of New Orleans, within ten days from service hereof, or judgment will be given against you by default.

JOHN C. BULL *et al.*
vs.
R. S. FRETZ AND JOHN FRETZ.

Witness the Honorable Theo. H. McCaleb, judge of the said court, at the city of New Orleans, this 14th day of March, 1848, and the 72d year of the independence of the United States.

N. R. JENNINGS,
Clerk.

(Signed) by A. BAISBLANC,
D'y Clerk.

Marshal's Return on the above.

Received, March 15th, 1848, and on the same day I served a copy of the within citation and plaintiff's petition on the within-named R. S. Fretz, in the following manner, to wit:

By handing the same to him in person at the city of New Orleans.

Returned March 15th, 1848.

For W. F. WAGNER,
U. S. Marshal.

(Signed) J. H. RINEHEART,
D'y U. S. Marshal.

And afterwards at the February Term, to wit, on the 27th March, 1848, the following exception was filed of record.

To the honorable the judge of the District Court of the United States for the State of Louisiana, sitting in the city of New Orleans.

To the bill filed in this honorable court by John C. Bull, William McClure and Thomas S. Foreman, against Ralph S. Fretz and John Fretz the defendants except upon the following grounds, to wit:

First. The process issued in said case is illegal.

Second. The respondents have never been legally cited to answer said bill and complaint.

Third. The bill shows no cause of action against the respondents.

Whereupon the respondents say they cannot answer said bill, and pray that it be dismissed at complainants' costs, &c. &c. &c.

(Signed) ELMORE & KING,
Proctors for Respondents.

And afterwards, at the same term, to wit: on the 31st March, 1848, the following entry was made of record.

JOHN C. BULL *et al.*
vs.
R. S. FRETZ AND JOHN FRETZ.

Friday, March 31st, 1848. Present, Hon. T. H. McCaleb.

The exception filed in this case was to-day called up—L. Hunton, Esq., for libellants, and W. W. King, Esq., for respondents, appearing. After hearing argument of counsel, the court took the exception under consideration.

And afterwards, at the same term, to wit: on the 1st April, 1848, the following entry was made of record.

Entry.

JOHN C. BULL *et al.*
vs.
R. S. AND JOHN FRETZ. No. 6479.

Saturday, April 1, 1848. Present, Hon. Theo. H. McCaleb.

W. W. King, Esq., proctor for the respondents, not appearing to be heard further in argument upon the exception filed in this case, the subject was laid over.

And afterwards, at the same term, to wit: the following entry was made of record.

JOHN C. BULL *et al.*
vs.
R. S. AND JOHN FRETZ. 6479.

Tuesday, April 4th, 1848. Present, Hon. Theo. H. McCaleb.

The court having taken under consideration the exception filed in this case—

Doth order, adjudge, and decree, that the exception be overruled; and doth further order that the respondents answer to the merits of the case.

And thereupon the following answer was filed of record.

Answer filed April 7th, 1848.

To the Hon. T. H. McCaleb, Judge of the District Court of the United States for the District of Louisiana, holding sessions in the city of New Orleans.

And now come Ralph S. Fretz and John Fretz, of the city of New Orleans, and for answer to the libel and complaint of John C. Bull and Co., of Kentucky, against them, allege and articulately propound as follows:—

First. That respondents are advised and believe that after the loss of the flat-boat No. 2, John C. Bull and Co. abandoned all

their interest in the said flat-boat to the Fireman's Insurance Company of Louisville, and recovered from said Insurance Company for a total loss, receiving thereby full compensation and indemnity for all the damage sustained by the loss or sinking of said flat-boat, to the said John C. Bull and Co.—that consequently libellants have no right to prosecute this suit, having no interest therein, and having no right to be twice paid for the same injury.

Second. The respondents further allege, that on or about the 11th of April, 1847, they were the owners of the steamboat Memphis—that said vessel was properly officered and fully manned, having on board a competent crew, skillful pilots, and all the other officers necessary for the proper and safe navigation of said steamboat.

Third. That while she was thus carefully pursuing the Mississippi River, on her downward trip, being at the time in the proper place for a descending boat, the officers on board said steamboat observed two flat-boats in the eddies just below the foot of Prophet's Island. There being at that place eddies on both sides of the river—one of the said flat-boats was in the eddy on the right side of the river, and the other in the eddy on the left side—the latter being the flat-boat No. Two.

At the time the said flat-boats were discovered, there was ample space for the steamboat to pass safely between them.

The flat-boat on the right hand side of the river was nearest the steamboat, and was first passed.

In order to leave ample room for passing safely the flat-boat No. Two, which was on the left side, the Memphis was steered as closely to the first flat-boat as it was prudent or safe to go.

That after the first flat-boat had been safely passed, the flat-boat No. Two appeared to be some two hundred yards in the eddy from the course of the steamer. The Capt. of the flat-boat hailed the Memphis, and requested that a Louisville paper might be thrown into the river for him, stating that he would send his skiff out for it. Up to this time there was not the slightest apprehension of a collision. The Capt. of the Memphis not liking the position of the flat-boat, she being at the time off to the left of his boat, with her bow nearly at right angles to his boat, requested the persons on the flat-boat (who were at the time idly looking at the steamboat, apparently unconscious of any danger) to throw down the stern of the flat-boat. The Capt. of the flat-boat then seized the helm and endeavored to do so, but could not succeed. A moment before this, no one would have supposed a collision possible, but just about the time the bow of the Memphis passed the flat-boat, she being then a considerable distance to the left of the course of the Memphis, a sudden change in the current of the eddy, or some other cause unknown to these respondents, threw the said flat-boat against the larboard wheel-house of the Memphis nearly bow-foremost, which started one of the planks of her bow, thereby causing her soon to fill with water and

sink. That previous to, and at the time of the collision, the Memphis was running in the current of the river between the two eddies.

Fourth. Respondents deny that said collision occurred by the fault, negligence, misconduct, or want of skill of any of the officers of the steamer Memphis, but aver that it occurred in consequence of the want of prudence and foresight on the part of those who commanded the flat-boat, and to the changeable currents in the eddy.

Fifth. That at the time the collision occurred, the water was very high and the currents unusually strong. That the Captain of the flat-boat admitted after the collision occurred that the steamer Memphis and those conducting her were not to blame or in fault.

Sixth. That after the collision, the Memphis assisted in saving the crew and property, and towed the said flat-boat many miles below, where she was subsequently sold by the persons having control of her. That the services of the Memphis were worth at least one hundred dollars, for which she has never made any charge.

Seventh. Respondents deny that the cargo of the flat-boat was worth the sum charged by the libellants; on the contrary, they have been informed and believe that the damage by the loss of the corn did not amount to more than forty-two cents per bushel, and the oats to not more than thirty-eight cents per bushel. That the lard was saved from the wreck without injury.

That the libellants have not deducted from the damages the amount for which the flat-boat was sold, as they were bound to do. Respondents call for strict proof of the amount and cost of said cargo, as they have no means of knowing the amount thereof, and are not willing to take the statements of the libellants.

Eighth. Respondents deny all and singular the allegations in said libel contained which are not herein admitted by the respondents, or which may differ from the allegations of these respondents.

Ninth. That all and singular the premises are true, in verification whereof, if denied, the respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore, the respondents pray that this Honorable Court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises, &c. &c.

Signed, R. S. FRETZ.

Signed, ELMORE & KING,
Proctors.

R. S. Fretz, being duly sworn, declares that the facts set forth in the foregoing answer are true.

Signed, R. S. FRETZ.

Sworn to before me this seventh day of April, 1848.
Signed, N. R. JENNINGS,
Clerk.

I, John Fretz, was not in the boat at the time the collision occurred, but I have been informed that the facts stated in the answer are true, and believe them to be so.

(Signed) JOHN FRETZ.

Sworn to before me this 7th of April, 1848.

(Signed) N. R. JENNINGS.
Clerk.

And afterwards, to wit: on the 13th day of April, A. D., 1848, the following affidavit for a commission was filed of record.

Affidavit filed April 13th, 1848.

JOHN C. BULL *et al.* *vs.* R. S. and J. FRETZ. } U. S. District Court. In Admiralty.

John Fretz, being sworn, states that he is one of the respondents in the above case.

That Doct. Galbert, who resides at Memphis, and Francis A. Harrison, who resides at Paducah, Kentucky, are material witnesses in his behalf. Wherefore a commission is prayed for, to be directed to James Rose, Esq., or J. B. Thorton at Memphis, to take the testimony of Doct. Gabert, and one to some Judge or Justice of the Peace at Paducah, to take the testimony of said Harrison.

He further states that Lewis D. Brown, James C. Bentley, Green Gibson, Micajah Mason and John D. Canover, are also material witnesses for the respondents. That they are transient persons, engaged in running boats to New Orleans and other places. Wherefore a commission is prayed for to be directed to some commissioner of this court to take their testimony whenever they may be found in New Orleans.

He further states that H. T. Curd, P. B. Atwood, and Joseph S. Morris, who reside in Louisville, are also material witnesses.

Wherefore a commission is prayed for to be directed to Hamilton Smith, Esq., to take their testimony.

(Signed) JOHN FRETZ.

Sworn to and subscribed before me this 13th day of April, A. D. 1848.

(Signed) N. R. JENNINGS,
Clerk.

And afterwards, to wit, on the 13th of April, 1848, the following entry was made of record.

Entry.

Thursday, April 13th, 1848. Present, Hon. Theo. H. McCaleb.

JOHN C. BULL *et al.*
vs.
R. S. AND JOHN FRETZ. } No. 6479.

Upon motion of W. W. King, Esq., proctor for respondents, and on his presenting to the court the affidavit of respondents, praying for commissions to be issued to take testimony—

It is ordered that commissions be issued, directed to Memphis and Paducah, Tenn., and Louisville, Ky., to take the testimony of the witnesses residing at said places, as named in said affidavit, which testimony is to be used in the trial of this cause.

It is further ordered that the testimony of the transient persons in the city of New Orleans, named in said affidavit, be taken before N. R. Jennings, commissioner.

Afterwards, to wit, on the 4th day of November, 1848, the following affidavit was filed.

Affidavit.

UNITED STATES DISTRICT COURT,
District of Louisiana.

JOHN C. BULL *et al.*
vs.
R. S. AND J. FRETZ. } In Admiralty.

John Fretz, being sworn, states that he is one of the respondents in the above-entitled case. That H. T. Curd, P. B. Atwood, and Joseph S. Morris, who reside in Louisville, Ky., are material and important witnesses in behalf of respondents; that the commission and accompanying interrogatories issued from this court in the month of April last, to take the testimony of said witnesses, were by inattention and negligence on the part of the commissioner to whom they were directed, lost, or irretrievably mislaid, and the taking of said testimony thus defeated.

Wherefore in consideration of the premises, the affiant prays that a commission do now issue, directed to Ballard Smith, Esq., Commissioner, &c., Louisville, Ky., to take the testimony of the witnesses named above, to be produced on the trial of the cause.

(Signed) JOHN FRETZ.

Sworn to and subscribed this fourth November, 1848, before me.

(Signed) ROBT. M. LUSHER,
D'y Clerk.

And afterwards, in the December term, on the 16th and 31st Ja-

nuary, and the 6th of February, 1849, the following entries were made of record.

Tuesday, January 16th, 1849. The court met. Present, Hon. Theo. H. McCaleb.

JOHN C. BULL *et al.*
vs.
R. S. FRETZ AND JOHN FRETZ.

This case was to day called for trial, but the court being otherwise pre-engaged, it was continued over to some future day.

Wednesday, January 31st, 1849. The Court met at 10 A. M. Present, Hon. Theo. H. McCaleb.

JOHN C. BULL *et al.*
vs.
R. S. AND JOHN FRETZ. No. 6479.

This cause was to-day called for trial, L. Hunton, Esq., appearing for the libellants, and W. W. King, Esq., for the respondents; when, by consent, it was continued until Tuesday, the 6th of February, 1849.

Tuesday, February 6th, 1849. The court met. Present, Hon. Theo. H. McCaleb.

JOHN C. BULL *et al.*
vs.
R. S. AND JOHN FRETZ.

Logan Hunton, Esq., on the part of the libellants, and W. W. King, Esq., for the respondents appearing, this cause was to-day taken up for trial; the evidence on the part of the libellants opened but not concluded; when the further hearing thereof was continued until to-morrow, the 7th inst., at 10 A. M.

EVIDENCE OFFERED ON THE PART OF LIBELLANTS.

Deposition of Ahira Galusha.

Deposition of witnesses taken in a cause pending in the United States District Court for the District of Louisiana, wherein J. C. Bull & Co., for the benefit of the Fireman's Insurance Company of Louisville are plaintiffs, and Ralph S. Fretz and John Fretz, late owners of the steamer Memphis, are defendants, on behalf of the plantiffs. Present, James D. Glass, Esq., for the plaintiffs; defendants not present.

Ahira Galusha, of Jefferson County, Indiana, of lawful age, being by me first duly sworn to testify the whole truth, and nothing but the truth, according to law, deposeth and saith—

Question 1*st*, by Plaintiffs. Where do you reside?

Answer. In Madison, Jefferson County, Indiana.

Question 2*d*, by same. Are you acquainted with the parties to the above-entitled suit?

Answer. I am.

Question 3*d*, same. Do you know anything about flat-boat No. 2, loaded with produce, which was lost on the Mississippi River in April, 1847? If so, state what you know about it.

Answer. I was the master of a flat-boat designated No. 2, which was owned by plaintiffs. About the 17th day of March, 1847, I, as master of said boat, started with her from the wharf opposite Madison, Indiana, with part of a cargo, consisting of lard, corn and oats, bound for New Orleans.—Said boat was staunch, tight, and well manned and provided, and in every respect in good order and condition for the voyage to New Orleans. I stopped at Ely's landing, about three miles below Madison, and took in four hundred sacks of corn in said boat. The next day stopped at Luckett's Landing, four miles below Madison, and took in five hundred sacks of corn, all for New Orleans. I then proceeded on the voyage, and arrived at Louisville, Kentucky, on the 20th day of March, 1847, and took in more corn. I left Louisville on the 22d of March aforesaid, and arrived at Owensburg, Kentucky, on the 24th, and took in one hundred and sixty-nine sacks of corn.

I then proceeded with said boat, and as master thereof, for the port of New Orleans. On the morning of the 11th day of April, 1847, between the hours of 9 and 10 o'clock, while with said boat in the Mississippi River about a mile below the foot of Prophet's Island, the said boat was sunk.

Question 4*th*, by same. State what caused said boat to sink?

Answer. It was sunk by coming into collision with the steamboat Memphis, owned by Ralph S. Fretz and John Fretz, the said defendants.

Question 5*th*, by same. What was the condition of said boat at the time of the collision.?

Answer. She was staunch, tight, well manned and provided, and in every respect in good order and condition for the voyage. I, the said master and the crew of the boat were, at the time of and before said accident, at our respective posts, taking every possible care and precaution, and using our utmost endeavors to prevent said accident.

Question 6*th*, by the same. State what where the relative positions of said flat-boat and said steamer Memphis immediately before and at the time of said accident?

Answer. Both boats were descending the Mississippi River. The flat-boat was floating with the current; the steamboat was running with the current slowly, not more than nine or ten miles per hour. At the place where the accident occurred there was at that time an eddy on both sides of the river, and I was floating or drift-

ing with the current near the left hand eddy—said eddies are known to all persons navigating said river; just before the collision took place, I was pulling from the eddy to prevent the boat being taken over the bank of the river, which at that place was overflowed. I saw the Memphis coming, and at that time there was room enough for her to pass without interfering with the flat-boat at all. I then ceased pulling to prevent coming in contact with said steamboat.

I commenced, with the assistance of two or three of my men, to throw up the stern of the boat so as to swing around, so that if the steamboat did strike the flat-boat, it might pass without injury to her. The bow of the steamboat had passed, and she struck the flat-boat as far aft as the wheel-house of the steamer, which caused the flat-boat to sink in less than five minutes. It was a total loss of the boat and cargo, except the lard, but two barrels of which was lost, and the wreck sold, with the assistance of the captain of the Memphis, for forty dollars. The captain of the Memphis did not see the collision, as he afterwards told me.

Question 7th, by same. Who were the owners of the flat-boat and cargo?

Answer. The plaintiffs, J. C. Bull & Co.

Question 8th, by same. Look at his bill of lading now shown you, and state whether it is a bill of lading of the cargo of said boat.

Answer. The bill of lading now shown to me, dated at Louisville, 22d day of March, 1847, addressed to Messrs. Foreman and Kennedy, by the plaintiffs, and signed by me, marked with the letter (A.) on the back of it, is the bill of lading which accompanied said boats, and is made a part of my deposition, and hereunto attached. I don't know the exact amount of corn that was put into said boat at Louisville; but at the time of the accident, she had on her rising four thousand bushels; she had oats—I don't think she had more than one hundred and fifty sacks; there was eighteen or nineteen barrels of lard when the boat sunk, all of which was saved except two barrels.

Question 9th, by same. State the value of said corn, oats, lard, and flat-boat, separately.

Answer. The corn was worth on the 12th and 13th days of April, 1847, at the levy in New Orleans, 80 to 85 cents per bushel. I heard that the corn on said boat had been sold at 85 cents.

I don't know what oats were worth; nor do I know what the lard was worth. The boat was worth about two hundred and twenty-five dollars.

Question 10th, by same. Was, or was not said accident caused by the carelessness or want of skill of the crew of said flat-boat?

Answer. It was not! We did all we could to prevent it. The current, together with the suction produced by the movement of the Memphis, produced the accident. The accident could not have been prevented by the flat-boat. The accident occurred in daylight, and

at a time when there was no fog on the river. Said flat-boat No. 2 was not in the eddy at the time, but at the edge of it, where flat-boats usually run.

The eddy on the left side of the river is there at all stages of the water, whether high or low.—There were no unusual currents, that I perceived, in the river at the time.

Any further saith not.

(Signed) AHIRA GALUSHA.

Bill of lading annexed to and made part of the foregoing deposition :—

Shipped, in good order and well conditioned, by the Louisville Manufacturing Company, on account and risk of whom it may concern, on board the good flat-boats called the
whereof Galusha is master for the present voyage, now lying in the Ohio River, and bound for New Orleans, the following packages or articles, being marked and numbered as below, which are to be delivered without delay, in like good order and condition, at New Orleans (the damages of the river and fire only excepted), unto Foreman and Kennedy, or to their assigns, he or they paying freight on the same at the rate of as per agreement.

In witness whereof, the master or clerk of said boat hath affirmed to 3 bills of lading, all of this tenor and date, one of which being accomplished, the others to be void.

Dated Louisville, this 2d day of March, 1847.

Various marks, 3136 sacks of corn.
" 31 bbls. and 1 keg of lard.
" 315 sacks of oats.

(Signed) AHIRA GALUSHA.

MESSRS. FOREMAN AND KENNEDY:

Gentlemen—Above please find Bss of 3136 sacks of corn for account of ourselves, 31 bbls. and 1 keg of lard for act. of W. J. McClure and Co., and 315 sacks of oats for act. of D. L. McClure, Esq. Debit McClure & Co. 70 cts. per bbl. freight on the lard, and debit D. L. McClure, Esq., 8 cts. per bushel freight on the oats (706 bushels) to our credit.

Please have the boats and *every utensil* sold by Mr. Galusha, except the lines; have them brought back by him, and delivered to our T. S. Foreman at Louisville.

Yours truly,
(Signed) J. C. BULL & CO.

Deposition of Samuel S. Thomas.

Samuel S. Thomas, of lawful age, of Jefferson County, Indiana, being first duly sworn, deposeth and saith :—

Question 1*st*, by same. Where do you reside?

Answer. I reside in the city of Madison, Indiana.

Question 2*d*, by same. Are you acquainted with the parties to the above-entitled suit?

Answer. I am.

Question 3*d*, by same. Do you know anything about flat-boat No. 2, which was owned by plaintiffs, and loaded with produce, and lost on the Mississippi River in April, 1847?—if so, state all you know about the loss of said boat.

Answer. The said boat No. 2, to which I refer, was owned by plaintiffs: Ahira Galusha was master of her, and I was one of the hands employed to go to New Orleans with her from the port of Madison. We left the port of Madison about the 17th day of March, 1847, with part of a cargo, consisting of said corn and oats, bound for New Orleans; said boat was staunch, tight, well-manned and provided, and in good condition for said voyage. We stopped at Ely's landing, and took in a large quantity of corn, amount not recollected. We left there and stopped at Luckett's landing, a short distance below, and took in another large quantity of corn. We thence proceeded, and arrived at Louisville on the 20th of March, 1847, and took in another lot of corn into the same boat. Thence we proceeded and landed at Owensburg, Kentucky, the 24th day of March, and took in another large lot of corn into said boat, all for the port of New Orleans. We continued the voyage without accident or interruption from any cause until the morning of April 11th, 1847, and on said day and between the hours of nine and ten o'clock, A. M., said boat with her cargo were sunk in the Mississippi River, about a mile below the foot of Proffet's Island; at the time of said accident, said boat was staunch, light, well-manned and provided, and in every respect in good order and condition for the voyage.

Question 4*th*, by same. State what caused the loss of said boat and cargo?

The loss was caused by the steamboat Memphis running into her. The master and all the hands belonging to said flat-boat were at their posts on the deck of the boat, and doing all in their power to prevent the accident. It was a clear day, no fog, and both boats were descending the Mississippi River.

The flat-boat was floating with the current, and the steamboat running with the stream. At the place of accident, there was an eddy on both sides of the river; the flat-boat was in neither of the eddies, but near the edge of the one on the left hand side of the river.

The Memphis struck the flat-boat in the bow, about the wheel-house of the Memphis, and caused the flat-boat to sink in about five minutes. The boat and cargo were a total loss, with the exception of some sixteen or seventeen barrels of lard, and the wreck of the flat-boat, which was towed by the Memphis some distance down the river, and sold for forty dollars.

At the place where the accident occurred, the river was very high and broad, and the Memphis might have passed on either side of us, and thereby prevented the accident. She was coming towards us, and if we had pulled from her, we should have pulled into the eddy; towards her, she would have run over us; we therefore ceased pulling at all.

Question 5th, by same. Who were the owners of said flat-boat and cargo?

Answer. The said plaintiffs.

Question 6th, by same. What was the value of said cargo?

Answer. I was in New Orleans on the 12th and 13th of April, 1847; corn was at that time worth there 80 cents. I don't know the value of the balance of the cargo or of the boat.

Question 7th, by same. Was or was not the accident caused by the carelessness or want of skill of the crew of said flat-boat?

Answer. Said accident was not occasioned by the carelessness or want of skill of the crew of said flat-boat. I was on said flat-boat at the time, and we did everything that we could to prevent said accident. The accident occurred as stated above by the Memphis striking the flat-boat.

(Signed) SAMUEL S. THOMAS.

I, Moody Park, the present mayor of the city of Madison, in the county of Jefferson, State of Indiana, do hereby certify, that the reason for taking the foregoing depositions is, that the witness live in Madison, Indiana, more than 100 miles from New Orleans, in the State of Louisiana, the place of trial of the cause for and in which said depositions were taken and are necessary.

I further certify that I have not made out and served on the said R. S. and J. Fretz, or adverse party, agent or attorney to be present at the taking of the depositions, and to put interrogatories if they may think fit, and that notice of the time and place of taking the said depositions were not made out and served, on said R. S. and I. Fretz or adverse party, because neither the adverse parties, nor any attorney or agent of said adverse party was at the time of taking said depositions within (100) one hundred miles of the said place of taking said depositions to the knowledge of the undersigned.

I further certify that on the 10th day of May, A. D. 1848, I was attended by the witnesses who were of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions were reduced to writing by me, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the depositions in my possession for the purpose of sealing up, directing the same with my own hand, and forwarding it to the court for which the same was taken.

I further certify that I am not of counsel nor attorney to either of the parties to the suit in said depositions and caption named, or

in any way interested in the event of said civil suit named in the caption.

[SEAL.] In testimony whereof I have hereunto set my hand and seal this 10th day of August, 1848.

(Signed) MOODY PARK,
Mayor.

Extracts from Price Current, April 13th, 1847.

April 13th, 1847.

The price of corn per bushel was . . .	80 to 85 cents.
" " " oats " " " . . .	60 to 66 cents.
" " " lard per pound was . . .	8 to 8¾ cts.

By reference to Price Current of above date.

Deposition of Martin Yourd.

Depositions of witnesses taken in a cause pending in the District Court of the United States for the district of Louisiana, wherein J. C. Bull and Co., for the use of the Fireman's Insurance Company of Louisville, Kentucky, are plaintiffs, and R. S. and J. Fretz, late owners of the steamboat Memphis, are defendants.

Martin Yourd, of Jefferson county, of lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposeth and saith:—

Question 1st, by plff. Where do you reside?

Answer. I reside at Madison, Indiana, more than one hundred miles from the city of New Orleans.

Question 2d, by same. Do you know anything about the loss of a flat-boat No. 2, with her cargo, of which Ahira Galusha was master, in the Mississippi River some time in the month of April, 1847? If so, state who were the owners of said boat and cargo, and all you know about the loss of the same.

Answer. About the 17th day of March, 1847, said flat-boat No. 2, of which said Galusha was master, and on which I was a hand, started from the wharf opposite Madison, Indiana, with a part of a cargo, bound for the port of New Orleans. Said boat stopped at Ely's landing, about three miles below Madison, and took in a quantity of corn; after stopping again at Lockett's Landing, we proceeded to Louisville, Ky., where we took in some more of the cargo, —thence to Owensburgh, Kentucky, where we took in more corn; thence we proceeded on our voyage. Said boat was bound for New Orleans. No accident occurred until we arrived at the foot of Proffet's Island, in the Mississippi River, when said boat and cargo were sunk in the river and lost—except the lard. The wreck was sold for about forty dollars.

Question 3d, by the same. State if you know what caused the said boat to sink.

Answer. She was run into by the steamboat Memphis, owned by the defendants.

Question 3*d*, by same. When did the accident occur?

Answer. In the month of April, 1847; it was on Sunday morning about 9 or 10 o'clock; the day of the month I don't recollect.

Question 4*th*, by same. What was the condition of said flat-boat No. 2 at the time she was struck by the Memphis?

Answer. She was staunch, tight, well-manned and provided—and in every respect in good order and condition for the voyage.

Question 4*th*, by same. Who were the owners of said flat-boat and cargo?

Answer. J. C. Bull & Co., the plaintiffs.

Question 5*th*, by same. State what were the relative positions of said flat-boat and the said steamboat Memphis, immediately before and at the time of the accident.

Answer. They were both going down the river. The flat-boat was floating with the current and the steamboat was running with steam.

Question 6*th*, by same. Was or was not the accident caused by the carelessness, want of skill of the crew of said flat-boat?

Answer. It was not. It was caused by the Memphis running into her as above stated, which took place in daylight, and no fog at the time.

Question 7*th*, by same. Was or was not the accident caused by the carelessness or want of skill of the crew of the Memphis?

Answer. It was—they had a plenty of room to avoid her.

Question 8*th*, by same. Do you know the value of said cargo?

Answer. I do not—it consisted of corn, oats and lard.

And further saith not.

(Signed) M. YOURD.

Deposition of Henry A. Moore.

Henry Moore, of Jefferson County, Indiana, of lawful age, being first duly sworn according to law, deposeth and saith:—

Question 1*st*, by plaintiff. Where do you reside?

Answer. In Madison, Indiana, more than one hundred miles from the City of New Orleans.

Question 2*d*, by same. Are you acquainted with the parties to the above suit?

Answer. I am acquainted with the plaintiffs, and know one of the defendants by sight.

Question 3*d*, by same. Do you know anything about a certain flat-boat, No. 2, of which Ahira Galusha was master? if so, to what port was said boat bound, with what was she loaded, and what became of said boat and cargo, and to whom did said boat and cargo belong?

Answer. I was on board of a flat-boat No. 2, of which Ahira Galusha was master, which was bound from the port of Madison, Indiana, to the port of New Orleans, and which boat and cargo

belonged to the plaintiffs, J. C. Bull & Co. We left the port of Madison, about the middle of March, 1847; we stopped at Ely's landing, and Luckett's landing, and took in corn at both places; we then proceeded to Louisville, Kentucky, where we took in some more corn; thence we proceeded to Owensburgh, Kentucky, where we completed the cargo, and proceeded on the voyage, without accident, until we arrived at the foot of Proffet's Island, in the Mississippi River, which was in the month of April, and on Sunday morning. I do not recollect the day of the month when and where said boat and cargo were sunk in the Mississippi River, and all lost except some lard, and the wreck, which wreck was sold for forty dollars.

Question 4th. What caused said boat to sink?

Answer. Said flat-boat was floating on the Mississippi River, when she was struck by the steamer Memphis, which was also descending the Mississippi River.

Question 5th, by same. Was said flat-boat in the right place when she was struck?

Answer. I have frequently run on the Mississippi River, in the last six or seven years, and the said boat was in the place where I have always seen flat-boats pass, when she was struck.

Question 6th, by same. What was the condition of the said flat-boat when she was struck?

Answer. Said boat was what is usually called a No. 1 boat, and when struck was staunch, tight, and well-manned and provided, and in every respect in good order and condition for the voyage.

Question 7th, by same. Was or was not said accident attributable to the carelessness or want of skill in the crew of the said flat-boat?

Answer. It was not owing to the carelessness or want of skill of the crew of the flat-boat, and could not have been prevented by the crew of the flat-boat.

Question 8th, by same. To whose fault was the accident chargeable?

Answer. It was the fault of the pilot or crew of the steamboat Memphis. The accident occurred in daylight, at a time when there was no fog on the river, and no wind. On the left side of said steamboat there was three hundred yards of water, and on the right hand side there was one hundred yards—the steamboat might have passed on either side with perfect safety to herself and the flat-boat, as there were no bars or snags in that part of the river—but instead of passing around, she undertook to run between the flat-boat and a hay boat that was floating between us and the right hand shore, and struck our boat as above stated, and sunk it in about five minutes. I am not acquainted with the value of either the boat or cargo—and further saith not.

(Signed) HENRY A. MOORE.

STATE OF INDIANA,
Jefferson County.

I, Moody Park, Mayor of the city of Madison, in the State and county aforesaid, do hereby certify that the reason for taking the foregoing depositions, that the witnesses live in Madison, Indiana, more than one hundred miles from New Orleans, State of Louisiana, the place of trial of the cause for and in which said depositions were taken. I further certify that I have not made out and served on the said R. S. and John Fretz, or adverse parties, agent, or attorney, to be present at the taking of the depositions, and to put interrogatories, if he or they may think fit, and that notice of the time and place of taking said depositions was not made out and served on said R. S. and J. Fretz, or adverse parties, because neither the said adverse parties, nor any attorney or agent of said adverse parties, was at the time of taking said depositions within (100) one hundred miles of the said city of Madison, the place of taking the said depositions, to the knowledge of the undersigned.

I further certify, that on this fifth day of July, A. D. 1848, I was attended by the witnesses, who were of sound mind and lawful age, and the witnesses by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions were reduced to writing by me, and after carefully reading the same to the witnesses, subscribed the same in my presence.

I have retained the said depositions in my possession for the purpose of sealing up, directing the same with my own hand, and forwarding to the court for which the same were taken.

I further certify that I am not of counsel nor attorney to either of the parties to the suit in said deposition and caption named, or in any way interested in the event of said civil suit named in the caption.

In testimony whereof I have hereunto set my hand and affixed the seal of the city of Madison.

[SEAL.] (Signed) MOODY PARK,
Mayor.

And afterwards, at the December term, to wit: on the 7th February, 1849, the following entry was made of record.

Wednesday, February 7th, 1849. The Court met. Present, Hon. Theo. H. McCaleb.

JOHN C. BULL *et al.*
vs.
R. S. AND JOHN FRETZ. } 6479. In Admiralty.

The hearing of this cause was to-day resumed, and the evidence for the respondents concluded; when, after argument by L. Hunton, Esq., for the libellants, and W. W. King, Esq., for the respondents, the case was submitted to the court.

EVIDENCE FOR THE RESPONDENTS.

Deposition of Ahira Galusha.

Filed December 27th, 1848.

JOHN C. BULL and others
vs.
R. S. AND JOHN FRETZ. } U. S. District Court in Admiralty.

Testimony taken by consent of parties.

Ahira Galusha states that he was master and in command of a flat-boat which came in collision with the steamboat Memphis, commanded by Capt. R. S. Fretz, about the 11th of April, 1847. Both vessels were bound down the river to the port of New Orleans. The place of the collision was a mile or two below Prophet's Island, on the Mississippi River.

There are two eddies in the river at that place nearly opposite each other, the one on the right bank being a little higher up. In the eddy on the right bank there were two flat-boats loaded with hay; they were lashed together—they were on the edge of the eddy.

Witness had passed through the shute with his boat, and was in the edge of the eddy on the left hand and was pulling to keep out of the eddy, fearing it would pull him on the shore, when he first discovered the Memphis. He knew from the position of the Memphis, she being near the middle of the river, that she must pass between his flat-boat and the other two flat-boats above mentioned. He thought at the time there was plenty of room for her to do so, as there must have been from one hundred and fifty to two hundred yards space between the said flat-boats.

When witness perceived the Memphis he stopped pulling, for fear that a reaction in the eddy might throw him out into the river against the steamboat. The steamer was near a half mile above, when the witness stopped pulling on his boat. The steamer continued to run on her course about the middle of the river. When the Memphis approached his flat-boat he had no thought of her coming in contact with his boat. He thought she would pass at some distance from the flat-boat.

He hailed the Memphis for a newspaper for a newspaper: that time he had no apprehension of danger, as the Memphis was too far off for those on board of her to have thrown a newspaper on board of his boat, even by tying it to a stick. He expected them to throw the newspaper into the water tied to a stick, which would float, and that he would have sent out his skiff to pick it. Witness thinks no paper was thrown.

About this time a sudden change in the current of the eddy struck his boat and forced her rapidly towards the steamer. The bow of his boat was pointing quartering towards the steamer, which was running down the main current. When witness perceived his

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Jefferson County.

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I further certify, that on this fifth day of July, A. D. 1848, I was attended by the witnesses, who were of sound mind and lawful age, and the witnesses by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions were reduced to writing by me, and after carefully reading the same to the witnesses, subscribed the same in my presence.

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There are two eddies in the river at that place nearly opposite each other, the one on the right bank being a little higher up. In the eddy on the right bank there were two flat-boats loaded with hay; they were lashed together—they were on the edge of the eddy.

Witness had passed through the shute with his boat, and was in the edge of the eddy on the left hand and was pulling to keep out of the eddy, fearing it would pull him on the shore, when he first discovered the Memphis. He knew from the position of the Memphis, she being near the middle of the river, that she must pass between his flat-boat and the other two flat-boats above mentioned. He thought at the time there was plenty of room for her to do so, as there must have been from one hundred and fifty to two hundred yards space between the said flat-boats.

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He hailed the Memphis for a newspaper for a newspaper: that time he had no apprehension of danger, as the Memphis was too far off for those on board of her to have thrown a newspaper on board of his boat, even by tying it to a stick. He expected them to throw the newspaper into the water tied to a stick, which would float, and that he would have sent out his skiff to pick it. Witness thinks no paper was thrown.

About this time a sudden change in the current of the eddy struck his boat and forced her rapidly towards the steamer. The bow of his boat was pointing quartering towards the steamer, which was running down the main current. When witness perceived his

flat-boat thus rapidly approaching the steamer, he endeavored to throw the stern of his boat up stream, so as to let the steamer pass by her side, but the current was so strong he could not throw her stern up the stream. She continued approaching the steamer, and struck with her bow quartering on the larboard wheel-house of the steamer. The flat-boat sprung a leak, and in a few minutes after sunk. After the collision, witness informed the captain of the steamer that his boat was in a sinking condition. Whereupon the captain of the steamer sent his yawl and some hands, who rendered every assistance in their power. They saved some ropes and some sixteen or seventeen barrels of lard, which was that was all on board except two barrels. The lard was not injured by being wet, but some of the barrels had their heads knocked in.

Being asked if he saw any fault in the way in which the steamer was navigated?

Says—None whatever. That if he had been the pilot at the wheel of the steamer he would have run her in precisely the same manner as she was run. He does not consider the steamer was to blame for the collision. Being asked, what then do you consider the cause of the collision? Answers—he thinks it was owing to the sudden shifting of the eddy.

Witness has been ten or twelve years engaged in navigating the river on steamboats and flat-boats, and was a pilot on a steamboat for some three or four months. Witness is well acquainted with the river. The eddies on the Mississippi River in high water are extremely uncertain, the currents in them frequently shifting with great violence. Witness has known them often to catch flat-boats and run them right ashore in despite of all the exertions of the hands on board the boats—at other times they would shoot the flat-boats half across the river.

There is no degree of experience on the river which would enable a man to foretell with any certainty what would be the action of those eddies.

The river was very high at the time this collision took place. It was over its banks.

The cargo of the flat-boat consisted of corn and lard and some feed-oats. The principal part of the cargo was corn. The corn was lost. Does not recollect the quantity.

J. McClure, one of the plaintiffs, told witness that he had been paid by the Insurance Company for the loss of the flat-boat. Witness does not know how much he was paid.

Witness states that his testimony has been previously taken in this case by the plaintiffs. That it was taken at Madison, in the State of Indiana. The name of the commissioner who took it was James Glass, a lawyer.

That he commenced taking the testimony of the witness, and when he came to the statement of the witness as to the manner and circumstances of the collision, the commissioner got mad and stopt,

and said that if this was the kind of the testimony the witness was going to give, the plaintiffs must lose the case. He stopt taking the testimony, and said he would write to Louisville about it. Next day he continued taking witness's testimony, but did not take down all that witness said. Witness does not now recollect what statements the commissioner did not take down, as he has not seen his testimony since, but he recollects that many of his statements were not taken down. Some things were stated which the witness told the Commissioner he thought ought to go down. The Commissioner replied it was of no use, as the other party would take that if they wanted it. Witness's impression was that the Commissioner took down only such testimony as he thought would assist the plaintiffs.

Cross-examined.

Witness resides in Madison, Jefferson county, Indiana. Mr. Glass, who acted as commissioner in taking his deposition, is dead now. He bore the character of being a very respectable man. Was a lawyer at the Madison Bar. On being asked if he can state now any important fact that he stated on his former examination before the commissioner, and which he declined to take down—Says he cannot—but when I was describing the nature of the place and so on, he said he didn't like that kind of testimony—said he would write to Louisville and notify the Insurance Office. He in a day or two after, continued the taking of the deposition. The deposition was taken before the Mayor, and not before Mr. Glass. Mr. Glass questioned witness, and the Mayor wrote down the answers.

The Mayor of the city who took down his testimony is a man of high character. He don't know whether the Mayor would be engaged in putting down anything he didn't say.

Mr. Bartley was pilot on the Memphis at the time of the accident. He visited my house at Madison, or rather my brother's house, where I was boarding, after I gave my first deposition herein. I don't recollect that the subject of the collision was mentioned. I got a letter from Capt. Fretz, in September, asking when I would be in New Orleans. Capt. Fretz and myself have been together frequently since I came to the city, talking about the collision. We were together day before yesterday, at Mr. King's office.

He, witness, did not mismanage this flat-boat as he knows of. He always tries to avoid steamboats as much as possible. He don't know how wide the river is at the place of the accident; he never measured it. He knows it is very wide; indeed, at the time of the collision it was over the banks.

He can't tell how far the boats were from the bank at the time of the collision. The water was over the banks; couldn't tell where the banks were. The eddy was some 2 or 3 or 4 hundred yards wide, and the collision took place on the upper side of the eddy, on the edge of the eddy next the current.

Mr. McClure said he had got the insurance, but didn't say he was fully paid for his loss. It is known to everybody navigating the river that there is an eddy where this collision took place, and all try to avoid it as much as possible.

The defendant has cross-examined this witness, reserving exceptions to the plaintiff's questions, and the witness answers in relation to the management of the Memphis, on the ground that the witness is not by profession or practice a steamboat pilot.

(Signed) AHIRA GALUSHA.

Sworn to and subscribed the 27th Dec., 1848, before

(Signed) ROBT. M. LUSHER,
D'y C'lk U. S. Dist. Court.

The foregoing deposition has been taken by consent.

(Signed) L. HUNTON.

(Signed) ELMORE & KING,
For Libellants.

Deposition of James C. Bentley.

UNITED STATES OF AMERICA,
District of Louisiana.

City of New Orleans.

Be it remembered, that on this 21st day of June, A. D. 1848, before me, N. R. Jennings, a commissioner duly appointed by the Circuit Court of the United States for the District of Louisiana, under and by virtue of the Acts of Congress entitled Acts for the more convenient taking of affidavits and bail in civil causes depending in courts of the United States, personally appeared two witnesses, persons of sound mind and lawful age, in behalf of respondents in an admiralty suit now depending in the District Court of the United States for the District of Louisiana, wherein John C. Bull and the others are libellants and complainants, and R. S. Fretz and John Fretz are respondents.

And having first carefully sworn the said witnesses to testify the whole truth, I proceeded to take their testimony, as follows:

James C. Bentley for Respondents, Deposes,

That he was on the steamboat Memphis at the time a collision took place between that steamer and a flat-boat No. 2. The collision occurred on the Mississippi River, just below the foot of Proffet's Island. The collision took place some time about the 10th or 11th of April, 1847. He was on board the steamer in the capacity of pilot, and was at the wheel at the time. Witness has been acting as pilot about eight years on the Mississippi and Ohio Rivers. Witness being asked to describe the river above and below and at the place of collision, says: That about a mile above Proffet's Island

the river runs nearly straight, until it reaches the upper point of Proffet's Island, and then the main channel of the river takes a deep curve to the right, which extends a little below the foot of Proffet's Island. The channel to the left of the island is pretty near straight, and runs so until it meets the river again at the foot of Proffet's Island. At the place of junction the river makes a curve to the left, forming an eddy on the left shore. There is also an eddy on the right hand shore under the point, opposite the eddy in the bend making out from the point towards that eddy. The eddy on the left hand shore is the larger one; it is a tolerably large eddy. These eddies are the strongest in high water. At the time of the collision, the stage of water was high. In these eddies the surface of the water is sometimes higher and sometimes lower than the surface of the river; from this circumstance he infers they fill and empty over in twenty-four hours; he never marked the time, but only judges this.

Witness being asked to describe the course of the steamboat Memphis before and at the time of the collision says—the Memphis came down the island shoot, passing out into the main channel; she was then about the middle of the river, a little nearer to the right hand point: as he was coming out of the island shoot, witness discovered two flat-boats, one on his right, coming down the main channel of the river, and the other he supposed to be in the eddy on the left; after he approached nearer the last-mentioned flat-boat, he discovered that the boat was in the eddy. This was flat-boat No. 2, the one with which the collision occurred. The witness states that to avoid any difficulty with the aforesaid flat-boats he took the widest space of the river, which was the current between the two boats. Witness ran as near to the boat on the right as he thought it was prudent to do in order to leave as much room for the one on the left as possible: witness did not then apprehend there was any danger of collision with the boat on the left, after passing the first flat-boat, he kept a straight course down the current of the river. He did not suppose that when he passed the first flat-boat he would run within a hundred yards of flat-boat No. 2. Witness does consider that flat-boat No. 2 did change the relative position to the course the Memphis was running. This change of relative position was caused by the eddy forcing out the flat-boat into the current of the river: witness observed the flat-boat and kept his eye upon her: witness ran the Memphis in such a manner as he thought would prevent the collision: witness thinks the Memphis was fifty yards from the flat-boat, when the bow of the Memphis first passed the flat-boat—at that time witness was running quartering into the bend on the left. The bow of the flat-boat was heading broadside to the Memphis—about the time the bow of the Memphis passed the flat-boat, witness was apprehensive of a collision, which apprehension was caused by the approach of the flat-boat: witness used every exertion to get the Memphis as far from the flat-

boat as possible; witness heard the captain of the Memphis hollow to the captain of the flat-boat, but he did not hear what he said. Witness being asked to describe the manner of the collision, states that he did not see them actually strike; the last he saw of the flat-boat was when the bow of the Memphis passed her clear; the flat-boat struck the Memphis just aft their larboard wheel: witness saw the flat-boat immediately after the collision; she struck the Memphis with her bow. If the flat-boat had been under the ordinary action of the current, witness thinks that she could not have struck the steamboat in that way: witness did not observe that the captain of the flat-boat did anything to avoid the collision; states that if the captain of the flat-boat had thrown the stern of his boat either up or down stream, he thinks the collision would not have occurred. The shock of the collision was very slight; after the collision, the Memphis rounded to and took the flat-boat in tow.

The officers and hands on the flat-boat came on board the Memphis. The captain of the flat-boat was named Galusha; witness heard the said captain observe that he did not apprehend the collision would have occurred; and stated that the collision occurred from the action of the eddy on the flat-boat, pushing her out into the current.

Witness being asked, did or did not Capt. Galusha say anything about the Memphis being or not to blame for the collision (the proctor for the libellants here objects to the question upon the ground of its being a leading question)—answered as follows:

That he heard Captain Galusha say something about it; he said that if he could have straightened his flat-boat either up or down, the collision would not have taken place; the captain further said that he did not blame the Memphis.

Captain Galusha did not attempt to change the direction of the flat-boat that witness could perceive—the last he saw of the flat-boat before the collision, Captain Galusha and his men were standing on the deck of the flat-boat doing nothing. Witness heard Captain Galusha hollow to some one on board the steamboat before the collision, but what he said witness did not understand. Witness saw Captain Galusha some time about the first of May, when Capt. G. mentioned that his testimony had been taken in this case; Capt. G. said that he had been called upon for his deposition in this case; the attorney asked him if he was acquainted with R. S. Fretz and brother, to which Capt. G. replied he was not; Galusha said to the attorney that he had the name wrong. The attorney then stopt taking Galusha's deposition at that time, and did not go any further. The next day the answer to the suit came on, and they found that they had the name wrong, and he was then notified to appear and give his deposition: that they commenced taking his deposition, and went on until they came to the point where the collision took place, and then they stopped, and objected to going any further, saying that his testimony was against them—after they stopt and objected to going any further, they sent for the witness again the

same day, or the day after, witness does not recollect, and said they must go on to take his testimony—and that his testimony remained as he had commenced it—(the proctor for libellants here objects to the whole of the foregoing testimony as to Galusha's statements about his deposition, and reserves all objections to the competency of the witness). The proctor for the respondents objects to both the foregoing objections, upon the ground that said objections were made too late.

Cross-examined.

At the time of the collision the Memphis was in the N. Orleans and Louisville trade; that R. S. Fretz was captain. The collision occurred somewhere between 8 and 12 o'clock in the forenoon. The day was clear—Witness does not know what the width of the river is at any place, but that it was hardly so wide at the place of collision as at other places. He judges that it was from three-quarters to a mile wide—he believes the place of collision to be about 140 miles from N. Orleans. Witness considers himself perfectly familiar with the river at the place of collision; he knew well the existence of those eddies spoken of, and how they operate at times—when he first discovered the flat-boat No. 2, he supposes that she was a mile or more below him; she was at that time on his left; the flat-boat on his right was tolerably close to the right bank of the river; and he supposes hardly half a mile above the flat-boat No. 2: witness cannot tell exactly how far flat-boat No. 2 was from the left bank at the time he first discovered her, as he was not in range of her; he supposes that at the time of the collision she was a little over one-third across the river from the left bank—Witness did not observe any pulling of the oars on the flat-boat at any time after he discovered her. The river was very high, in many places running over the bank. The flat-boat being in the eddy, the tending of that eddy was to force the flat-boat into the current: such would not be the tendency if the eddy was filling. At the time of the collision he supposes the speed of the steamer to be about ten miles an hour. He cannot say whether the collision could have been avoided if the steamboat had been going at an increased or diminished speed. He did not change the speed of the steamboat when he first anticipated the danger of a collision. Witness being asked what particular exertions, if any, he made to avoid the collision, said that all that he could do was to get the boat as far away as possible; there was not ample room between the place of collision and the right hand shore for the steamboat to have passed; there was room to pass on the left hand bank by going into the eddy: the eddies on both sides are very nearly opposite: the collision took place right along the break of the eddy of the left hand bank: when he first saw the flat-boat in the eddy he did not know that the tendency of the eddy would be to throw her out into the stream; he rarely pays atten-

tion to such things. After the collision the flat-boat sunk, and he supposes she was capsized: the cargo of the flat-boat was principally all lost. Witness believes that the conversation already stated between himself and Capt. Galusha took place in the pilot-house or on the guards; he does not remember that any other person was present; states that Capt. Galusha said that the collision ought have been avoided if he could have straightened the flat-boat either up or down the current; but he does not remember that Capt. G. said that he tried to do so. Witness saw Capt. Gallusha last at Madison (Ia.), where the conversation occurred in relation to the deposition which has been detailed; he did not call to see him concerning that business; he called to see him as a friend, at his Gallusha's house. Witness had been requested by Capt. Fretz to call and see Capt. Gallusha in relation to the collision: being asked if he stopt in Madison for that purpose, answers that he had no particular business there, but he stopt to see Capt. Gallusha.

Examination in chief resumed.

States that he is now running on the Gen. Lafayette, and that the respondents have no interest in that vessel, and that he is in no way in their employ.

States that the eddies below Proffet's Island occupy about three-fourths of the width of the river. The one on the left hand is larger and longer than the one on the right. There is a bar making out from the right hand point. Witness did not run into the eddy to pass between the flat-boat No. 2 and the shore, because it is not customary for steamboats descending to run into the eddies unless they have business there; they frequently go in to land passengers. Witness thinks it would be neither prudent nor safe for a steamboat to run into an eddy where there was a flat-boat in order to avoid a collision. The currents in those eddies are very fluctuating and shifting. States that the reason there was not room between the place of the collision and the right hand shore for him to pass was in consequence of the bar and eddy making out from the point and the flat-boat above; that he did run as close to them as he considered it prudent to do.

Cross-examination resumed.

The point about which he has been speaking is rather, if anything, above the place of collision; at the stage of water then existing, he could not have safely gone more than one-third of the distance of the width of the river from the right hand bank. At the time of the collision, he supposes the two flat-boats were somewhat nearer each other than when he first discovered them; he does not know where Capt. Fretz was at the time of the collision; he was not upon the hurricane deck.

(Signed) JAMES C. BENTLEY.

Deposition of Green Gibson.

Filed June 21st, 1848.

Green Gibson, being duly sworn, deposes that he was on the steamboat Memphis when the collision took place between the steamer and flat-boat No. 2. Witness saw the collision at the time. Witness was mate of the Memphis. The steamboat was running straight down the current at the time the collision occurred. He was standing on the boiler deck, and saw the flat-boat when the bow of the steamer passed her; the flat-boat was then about 40 or fifty yards from the bow of the steamer. The flat-boat was standing nearly bow on to the broadside of the steamboat. The flat-boat struck the steamer near about the wheel, or aft the wheel, he is not certain; he did not notice which way the flat-boat was running; the eddy might have been slewing her around; she was in a kind of eddy. Capt. Fretz sung out to the Captain or pilot of the flat-boat to throw her stern up stream; the captain of the flat-boat ran back to do so, but it was too late. Witness did not see them do anything on the flat-boat until Captain Fretz hollowed to them. When he hollowed to them, he was on the larboard guard on the boiler deck. If Captain Galusha had thrown up the stern of his boat in time, the collision would not have occurred. Witness heard Captain Galusha hollow to Captain Fretz to throw him a paper. This was before Captain Fretz hollowed to him to throw up her stern. The boats were not near enough then for Captain Fretz to have thrown a paper on the flat-boat, unless it had been tied to a stick, or something of the sort. Witness has often letters and the like thrown from steamboats on billets of wood, bottles, &c., so that they could be picked up by the flat-boats on the river. Witness brought Captain Gallusha in the yawl to the Memphis, and saw him on board afterwards. Witness heard Captain G. say, once or twice, that he did not think the collision had happened from the steamboat's fault, but that it occurred from the action of the eddy.

Witness does not think that the Memphis could have done anything more than she did to have avoided the collision.

Cross-examination.

Being asked what the Memphis had done to avoid the collision, said that he does not know what was done, except that she kept straight on down the river.

Witness being asked if the Memphis had been a few feet further over to the right, the collision might have been avoided; answers that he does not know. Witness being asked whether the collision would have been avoided by the speed of the boat being increased, or by stopping, answers that it would be hard for him to tell.

Witness supposes that at the time of the collision the Memphis was at the top of her speed. Witness did not see the flat-boat at all until the bow of the steamer was just passing her. It was not wit-

ness's watch at the time, but he was on deck. Witness did not take no notice of the other flat-boat.

Witness had been on deck constantly, from the time he ate his breakfast until the time of the collision; that he had not turned in; he was at the larboard wheel of the larboard guard at the instant of the collision, and as soon as he saw her strike, he ran and got the yawl with two or three men, so that he might get the persons off from the flat-boat in the event of her sinking. Witness saw Captain Fretz standing on the larboard guard, just before the boats struck; he, witness, was standing on the same guard, looking out, but not doing anything at the time—witness heard Captain Galusha hollow for a paper: he supposes the flat-boat to have been some forty or fifty yards off from the bow of the boat, on the larboard side. All that he heard Captain Fretz say was, to throw her stern up stream. This was before he ran back to the wheel.

Witness being asked what the flat-boat was loaded with, says that he saw corn and lard on board; that some few barrels were saved; he thinks they saved all the lard. He thinks so because he heard the captain of the flat-boat say they had got pretty much all the lard; he does not know how much was saved; he was not clerk of the boat and therefore did not know how much.

The flat-boat was floating at the time of the collision.

Examination in chief resumed.

States that when he first saw the flat-boat, he was standing on the boiler deck forward; he stood there until he thought the flat-boat would strike, when he ran back to the wheel-house.

(Signed) GREEN GIBSON.

I, N. R. Jennings, a commissioner duly appointed by the Circuit Court of the United States, do hereby certify that the reason for taking the foregoing depositions is that the witnesses do not reside in the State of Louisiana, and that they live more than one hundred miles from New Orleans, State of Louisiana, the place of trial of the cause for and in which said deposition is taken.

I further certify that I made out and caused to be served on the proctor for the libellants and complainants, to be present at the taking of said depositions, notices of the time and place of taking the same, and that the proctor of said libellants appeared, and was present during the whole of the said depositions.

I further certify, that on this, the 21st day of June, 1848, I was attended by the two witnesses, James C. Burnnett and Green Gibson, and that the foregoing are their true depositions in answer to the several interrogatories propounded to them, and that after the same were carefully read over to the said witnesses, they respectively subscribed their names before me.

I further certify, that I am not of counsel nor attorney to either

of the parties to the suit in said deposition, or in any way interested in the event of said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this 21st day of June, A. D. 1848.

(Signed) N. R. JENNINGS,
U. S. Commissioner.

Commission to take the Testimony of Doct. Gabert, residing in Tennessee.

Issued April 13th, 1848.

Court of the United States for the District of Louisiana:—

To James Rose, Esq., or J. B. Thorton, at Memphis, Tennessee—

KNOW YE: That reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Doct. Gabert, who resides in Memphis, Tenn.; and him duly examine on oath, touching and concerning certain matters and things in a cause now depending in the said court, wherein John C. Bull and others are libellants, and R. S. and J. Fretz respondents; and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Theodore H. McCaleb, judge of said court, at the city of New Orleans, this thirteenth day of April, Anno Domini 1848, and the seventy-second year of the Independence of the United States of America.

N. R. JENNINGS,
Clerk.

(Signed) By ROBERT M. LUSHER,
Deputy Clerk.

Interrogatories annexed to the foregoing Commission.

Interrogatories to be propounded by virtue of the annexed commission to Doct. Gabert, a witness, residing at or near Memphis, Tennessee, whose testimony is taken in behalf of the respondents, in the case of John C. Bull & Co. *vs.* R. S. and J. Fretz. in a suit pending in the District Court of the United States for the District of Louisiana.

Int'g. 1st. Do you or not, know anything of a collision which occurred on the River Mississippi, on or about the 11th of April, 1847, between the steamer "Memphis" and a flat-boat called No. Two?

If you please, state where the said collision occurred, and all the circumstances within your knowledge in relation thereto?

Int'g. 2d. In what manner did the two vessels strike? What caused the collision? Was it or not owing to any neglect or mismanagement on the part of those who navigated the Memphis?

Int'g. 3d. Did you, after the collision, hear any of the officers of the flat-boat speak of the collision? If yea, what did they say caused the collision? Did they or not blame the steamer Memphis or those who navigated her?

Int'g. 4th. The owners of the Memphis are sued for damages for sinking the flat-boat. Please state all the facts you know going to show they are not liable?

(Signed) ELMORE & KING.

Cross-interrogatories.

Propounded by libellants to Dr. Gabert, a witness in behalf of respondents, and to be answered by him under oath.

Int'g. 1st. What is your age and occupation, and where do you reside?

Int'g. 2d. If you say you saw the collision referred to in respondents' 2d Int'g., please state what part of the boat you were in when the collision took place? Where did the collision occur? In what part of the river, and nearest which bank or shore, and how far from the shore? How was the steamer Memphis descending, directly down the river or quartering? How far above the place of collision did you see the flat-boat? Was there an eddy on either or both sides of the river? If yes, was not the flat-boat in the eddy or on the edge of the eddy?

Int'g. 3d. How wide is the river at the place of collision? Was there not ample room and space in the river for the steamer to pass without striking the flat-boat? What part of the steamer and what part of the flat-boat struck? What efforts, if any, were made by the steamer to avoid the collision? State particularly if any efforts were made, and what were they? After the collision did the flat sink, and how long after? Where were you standing when the boats came together? Are you familiar with the river and the management of steamboats? Did the collision occur in the daytime? If yes, about what hour? Was the day clear or foggy?

Int'g. 4th. If in your answer to respondents' 3d Int'g. you say you heard officers of the flat-boat speak of the collision—please state who they were, and what officers they were, and where, and how, and when did the conversation occur—and in whose presence—and is your knowledge of such conversation at this time minute and particular, or only vague and general? How long since you heard the conversation, if any, and have you detailed the whole of the conversation you heard?

Int'g. 5th. Have you any interest in this suit, either directly or indirectly? Are you related to R. S. or J. Fretz? if yes, in what degree? Do you know of any circumstances not narrated which would be beneficial to the libellants in making out their case? If yes, please state the same particularly, as if specially interrogated under oath.

(Signed) L. HUNTON,
For Libellants.

Deposition of Michael Gabbert.

(Filed Feb'y. 7th, 1849.)

In pursuance of the annexed commission to me directed, from the Court of the United States for the District of Louisiana, I have on this 14th day of July, 1848, caused to come before me, at my office in the city of Memphis, in the county of Shelby, in the State of Tennessee, Michael Gabbert, aged about 45 years, a resident citizen of said county, and a witness in the cause in said court depending, wherein John C. Bull and others are libellants, and R. S. & J. Fretz, are respondents. And the said Michael Gabbert, being first duly charged and sworn according to the laws of Tennessee, to declare the truth, the whole truth, and nothing but the truth, responds to the several interrogatories and cross-interrogatories hereto attached in the order they are written, viz:

Answer

Of Doct. M. Gabbert to interrogatories propounded to him in a suit now pending in the District Court of the United States for the District of Louisiana, where John C. Bull & Co. are libellants and R. S. & J. Fretz are respondents.

Answer

To Question 1*st*, by respondents. I was a passenger on board the steamer Memphis, on her downward trip, some time in the month of April, 1847; and when about 140 miles above New Orleans (as I was then told), she came in collision with a flat-boat, which so damaged it as to cause it to sink in a few minutes. I did not hear the name or No. of the flat-boat. I saw the flat-boat when some distance above it, but passed to some other part of the steamboat and did not again see the flat-boat until after the collision had taken place, and the flat-boat was in a sinking condition. I know nothing of the manner or cause of the collision from my own knowledge.

Ans. to Quest. 2*d*, by same. I have embraced the answer to this question in my answer to the 1st quest., except as to the management of steamboat officers, consequently cannot say whether there was neglect or mismanagement on their part or not.

Ans. to Quest. 3*d*, by same. I asked the Capt. of the flat-boat after the collision and sinking had taken place, whether or not the officers of the steamer Memphis were to blame in sinking the flat-boat:—he replied distinctly that *they were not*, that the boats were passing (as he thought at the time) sufficiently far apart to be out of all danger, but passing into a sudden whirl or eddy in the river the flat-boat was suddenly thrown against the steamer Memphis, which caused the sinking of his boat.

Ans. to Quest. 4*th*, by same. I know of no facts going to show that they are or are not liable, except those related in my answer to question 3d.

Ans. to Quest. 1*st* by libellants on cross-examination. My age is forty-nine years, my profession a practicing physician; my residence is in the city of Memphis, Tennessee.

Ans. to Quest. 2*d*, by same. I did not see the collision referred to. I was told it occurred about one hundred and forty miles above New Orleans. It was nearest the west bank of the river, and distant from it one to two hundred yards, as well as I could judge: the steamer Memphis was descending directly downwards, as I then and now think. I saw the flat-boat when some one to two hundred yards below us, but did not then think from the position of the two boats that there was the least danger of a collision. I know nothing about the water, except what I was told: the Capt. of the flat-boat told me there was an eddy there, and that the flat-boat was in it or on the edge of it at the time the collision took place, and was by a sudden whirl of the water thrown against the steamboat.

Ans. to Quest 3*d*, by same. I know nothing as to the width of the river at the place of collision. I observed nothing unusual as to the width of the river either increasing or diminishing at that point. I should think there was ample room for the boats to have passed without striking. I know not what part of either boat struck, but believe there was a plank knocked off one end of the flat-boat. I know nothing of the efforts of the officers of either boat to avoid the collision, as I was not out at the time, and did not see the danger the boat was in until she was sinking. The flat-boat sunk in two to three minutes after the collision took place, but rose again in a few minutes with one end foremost, which end seemed to be empty, and rose considerably above the water's edge, while the other end was under the water. I am not familiar with the river or management of steamboats; the collision took place in daylight, between eight and twelve o'clock A. M. I believe. I do not now recollect whether the day was clear or cloudy, but think it was clear.

Ans. to Quest. 4*th*, by same. The man I had the conversation with told me he was the captain of the flat-boat, and had the management of the boat. I do not now recollect his name, although I heard it repeatedly at the time the conversation alluded to took place on board the steamer Memphis, a short time after the collision took place. I asked him about it, and he gave the answers I have given to Ques. 3d by respondents. I do not recollect whether any other person was present at the time the conversation took place or not, but my recollection is very minute, for I asked the question to try and find out who was to blame, and whether the steamboat would be liable to damages for the sinking or not. I heard a great deal of conversation about this matter while on board the boat, but do not now recollect more than I have here stated, as this is all that made any impression on my mind at the time.

Ans. to Quest. 5*th*, by same. I have no interest in this suit whatever. I am not related to either R. S. or J. Fretz to my knowledge in any way. I know of no facts or circumstances that would bear

upon the case for either side, except what I have here related, and further this deponent saith not.

(Signed) MICHAEL GABBERT.

STATE OF TENNESSEE,
Shelby County, ss.

I, James Rose, a duly commissioned and sworn justice of the peace and notary public, within and for said county, do hereby certify that the foregoing deposition of Michael Gabbert was taken before me on the day and at the place named in the caption, that it was reduced to writing, and signed by said witness (in my presence), who is a citizen of Memphis, in the county and State aforesaid. That it was taken in conformity with the laws, usages and customs of the State of Tennessee, and has not been altered while in my hands, nor been out of my possession until first sealed up and delivered to the post-office at Memphis aforesaid.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my seal of office at Memphis aforesaid, this 14th day of July, 1848.

(Signed) JAS. ROSE,
Justice of the Peace and Notary Public, Shelby County, Tenn.

Commission to take the Depositions of H. T. Curd, P. B. Atwood, and Joseph L. Morris.

Issued the 4th November, 1848.

Court of the United States for the Eastern District of Louisiana.

To Ballard Smith, Esq., Comm'r, &c., Louisville, Ky.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you H. T. Curd, P. B. Atwood, and Joseph S. Morris, and them duly examine on oath, touching and concerning certain matters and things in a cause now depending in the said court, wherein John C. Bull and others are libellants, and R. J. and Jno. Fretz, are respondents; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

[SEAL.] Witness the Honorable Theo. H. McCaleb, judge of said court, at the city of New Orleans, this fourth day of November, Anno Domini, 1848, and the 73d year of the independence of the United States of America.

N. R. JENNINGS,
Clerk.

(Signed) ROBT. M. LUSHER,
D'y Clerk U. S. Dist. Court.

Interrogatories annexed to the foregoing commission.

Interrogatories to be propounded by virtue of the annexed commission to H. S. Curd, P. B. Atwood, Joseph S. Morris, and others, who reside at Louisville, Kentucky, to be used in the behalf of the respondents, in the case of John C. Bull and others against R. S. and J. Fretz, in Admiralty in the District Court of the United States for the District of Louisiana.

Int'g. 1st. What is your age and occupation?

Int'g. 2d. Are you not officers or directors of or in some manner connected with the Firemen's Insurance Company of Louisiana? If yea, please state what is your connection with said company, how long you have been connected with said company? Were you so connected with said company in the year 1847?

Int'g. 3d. Were the libellants, John C. Bull & Co., authorized at any time by said company to institute this suit? If you please, state when they were so authorized, and in what manner? Was there ever any resolution passed by the board of directors of said company to that effect? If yea, please give a copy of said resolution.

Int'g. 4th. Did the libellants insure in your office a flat-boat called No. 2, some time in the spring of 1847? If yea, please annex a copy of the policy of insurance.

Int'g. 5th. Did said libellants ever present a claim against your office for the loss of the said flat-boat? If yea, please state whether they claimed for a total loss? Did your company settle with them as for a total loss? Upon what terms did you settle? How much did you pay on account of the loss of said flat-boat? Did the libellants make an abandonment after the loss of the said flat-boat occurred? If yea, please annex said abandonment or a copy thereof to your answers. How, when, and where was the flat-boat lost, according to the representations of the said libellants, when they presented their claims for indemnity to your insurance office?

(Signed) ELMORE & KING,
Proctors for Respondents.

I decline to propound any cross-interrogatories to the above-named witness.

(Signed) L. HUNTON,
For Libellants.

Deposition of P. B. Atwood.

Filed February 7th, 1849.

In virtue of the authority vested in me, by the annexed commission issued from the Court of the United States for the Eastern District of Louisiana, on the fourth day of November, 1848, in a certain suit now depending in the said court, wherein John C. Bull and others are libellants, and R. S. and J. Fretz are respondents, I, Ballard Smith,

commissioner, caused P. B. Atwood, H. D. Curd, and Joseph S. Morriss, the witnesses, to come before me, this 16th day of December, 1848, at the office of the Fireman's Insurance Company of Louisville, in Louisville, Kentucky, and after swearing them to tell the truth, I propounded to them the interrogatories annexed to said commission, which they answered as follows:

The witness P. B. Atwood being first examined, to the first interrogatory he answers as follows:—

1st. I am in my fifty-seventh year.

To the second interrogatory, he answers as follows:—

2d. I am secretary of the Fireman's Insurance Company of Louisville, and was during the year 1847. That is my occupation. I have no other connection with said company, being prohibited from being a stockholder by the charter.

To the third interrogatory, he answers as follows:—

3d. The libellants John C. Bull & Co., when they informed me of the loss of flat-boat No. 2 (Galusha Master), and of the cause of the loss, were requested by me, as the organ of the Fireman's Insurance Company of Louisville, to hold the steamboat Memphis and owners responsible to them for the loss—the said libellants not being fully insured on the boat and cargo. The only action of the board of directors of the Fireman's Insurance Company of Louisville, on the subject of the loss on the cargo of said flat-boat No. 2, was an order authorizing the secretary of the company to pay the loss. There has not been any action of the board in regard to the loss other than to order it paid. It was, however, agreed, between John C. Bull & Co. and myself, as the organ of the Fireman's Insurance Company of Louisville, that they (John C. Bull & Co.) should bring a suit against the steamer Memphis and owner for the recovery of the loss, for the benefit of said John C. Bull & Co. and for the Fireman's Insurance Company of Louisville, to the extent of each interest.

To the fourth interrogatory, he answers as follows:—

4th. The libellants, John C. Bull & Co., insured in this office on the twenty-second day of March, 1847, to the amount of thirty-five hundred and seven $\frac{83}{100}$ dollars, on

1653	sacks corn,	4125 bushels	@ 75 cents,	$3,093 00
158	sacks oats,	353 "	@ 40 "	141 20
17	barrels lard,	. . . . .		333 63
				$3,567 83

which amount less $\frac{27}{100}$ being abated, say thirty-four hundred and ninety-six $\frac{48}{100}$, was paid to said John C. Bull & Co., on the 4th day of May, 1847. The value of the above property was the market price at New Orleans. There was no insurance on the flat-boat, which with the tackle and provisions was worth at least two hundred dollars. The Insurance was alone on the cargo. I file with this deposition a copy of the policy marked (A).

To the fifth interrogatory, he answers as follows:—

5th. The libellants applied at the office of this company on the fourth day of May, 1847, for a settlement of the claim, and the award made out by myself for the loss, which was shown to the applicants, which was satisfactory, and the amount accordingly paid. I have spoken as to the amount of the loss in my answer to the previous interrogatories. There was nothing said about an abandonment. The flat-boat No. 2 was lost, as represented in the protest of Galusha on the 11th day of April, 1847, in the Mississippi River, opposite Proffet's Island, about twelve miles above Baton Rouge. It is right to state that three hundred and nine dollars $\frac{9}{100}$ has been received from the proceeds of lard saved from the wreck of flat-boat No. 2, which amount should be deducted from the claim against R. S. & J. Fretz.

And further deponent saith naught.

(Signed) P. B. ATWOOD.

(*Vide* page 85 for policy of insurance.)

The witness H. D. Curd, being next called and examined—

To the first interrogatory, he answers as follows:—

1st. I am of lawful age, and am by occupation merchant.

To the second interrogatory, he answers as follows:—

2d. I am President of the Fireman's Insurance Company, and was during the year 1847. I have been connected with the said company for some 10 or 12 years.

To the third interrogatory, he answers as follows:—

3d. I have an indistinct remembrance of something being said at a meeting of the board of directors about a suit against the owners of the steamboat Memphis, but I do not remember what it was, nor do I remember that any resolution about such suit was ever passed.

To the fourth interrogatory, he answers as follows:—

4th. I know that John C. Bull & Co. made several insurances in the office of the Fireman's Insurance Company during the year 1847, but I do not know whether they insured the flat-boat No. 2 there or not.

To the fifth interrogatory, he answers as follows:—

5th. I cannot answer this interrogatory, because I do not recollect whether such transactions occurred or not.

And further deponent saith naught.

(Signed) HARDEN Y. CURD.

Deposition of Joseph S. Morris.

The witness Joseph S. Morris, being lastly called and examined—

To the first interrogatory he answers as follows:

I am forty-three years of age, and by occupation a druggist.

To the second interrogatory he answers as follows:

I am a director in the Fireman's Insurance Company of Louisville, and was so during the year 1847.

I have been a stockholder in the company since its formation, some time about the year 1833 or '35, and a director for some two or three years.

To the third interrogatory he answers as follows:

I know nothing about this suit, and have no recollection of the passage of any resolution such as that inquired about.

To the fourth interrogatory he answers as follows:

I am not aware that John C. Bull and Co. ever insured in the office of the Fireman's Insurance Company any flat-boat, or at least have no recollection of any such insurance.

To the fifth interrogatory he answers as follows:

I have no knowledge of any such claim, nor do I know anything about the matters inquired of in this interrogatory.

And further deponent saith naught.

(Signed) JOS. S. MORRIS.

STATE OF KENTUCKY,
City of Louisville, ss.

I, Ballard Smith, commissioner as aforesaid, do hereby certify that the above-named witnesses, P. B. Atwood, H. D. Curd, and Joseph S. Morris, appeared before me, and answered the interrogatories propounded to them as above set forth, and signed, and swore to the same in my presence and before me.

In testimony whereof I hereto set my hand and seal this 16th day of December, A. D. 1848.

(Signed) BALLARD SMITH, *Comm'r.*

Copy of the policy marked (A), annexed to P. B. Atwood's deposition.

(A.)

CARGO.

The Firemen's Insurance Company of Louisville, Kentucky.

THIS POLICY OF INSURANCE WITNESSETH,

No. 2065.

That the President and Directors of the Firemen's Insurance Company of Louisville do, by these presents, insure and cause John C. Bull and Co., or whom it may concern, to be insured, lost or not lost, (excepting money, bullion, promissory notes, and other evidences of debt), on any and all risks which may from time to time be taken by this company, and written on this policy by the President or Secretary of the company.

Sum insured.
$ Open.

laden, or to be laden, on board the good ——— boat called the ———, whereof is master for the present voyage ———, or by whatever other name or names the said ——— boat or the master is or shall be called, between and at the said places, during the continuance of this policy; beginning the adventure upon the said goods and merchandize as aforesaid, from and immediately following the lading thereof, at the place of shipment as aforesaid and continuing the same until the said goods and merchandize aforesaid, shall be safely landed at ———. And it shall and may be lawful for the said ——— boat in ——— voyage, to proceed to, touch and stay at any port or ports, place or places, if thereunto obliged by stress or wether, or other unavoidable accidents; also at the usual landings for wood and refreshments, and for discharging freight and passengers, without prejudice to the insurance.

Touching the adventures and perils which the aforesaid Insurance Company is contented to bear, they are of the rivers, seas, men-of-war, fire, enemies, pirates, rovers, thieves, jetisons, letters of mark and enter-mart, surprisals, takings at sea, arrests, restraints, detainments of all kinds, princes, or people, of what nation, condition, or quality soever, and all perils, losses, and misfortunes (by reason of the danger of the rivers or seas) as may have or shall come to the hurt, detriment, or damage of the said goods and merchandize, or any part thereof, according to the true intent and meaning of this policy. And in case of any loss or misfortune, it shall be lawful, and it shall be the duty of the assured ——— factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandize, or any part thereof, without prejudice to this insurance—to the charges whereof the assurers will contribute in proportion as the sum insured is to the whole amount at risk.

And so the president and directors aforesaid are contented, and hereby bind the capital stock and other common property of the said Insurance Company, to the assured, ——— heirs, executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this insurance by the assured, at and after the rate of at such rate of premium as may be agreed, until the time of taking and entering the risk which is to be charged to account.

Premium, $—— Policy. Open. $

And in case of loss, the assured shall abate two per cent. on the amount insured, such loss to be paid in sixty days after proof of loss and proof of interest and adjustment thereof; the amount of the note given for the premium, if unpaid, and all other debts, dues and demands of said company, against the said assured being first deducted.

And it is hereby agreed, that if the said assured shall have made

any other insurance upon the said goods and merchandize, prior in date to this policy, then the said Firemen's Insurance Company shall be answerable for so much only as the amount of said prior insurance may be deficient towards fully covering the property at risk; and the said insurance company shall return the premium upon so much of the risk by them insured, as they shall be by such prior insurance exonerated from; and in case of any insurance upon the said goods and merchandize, subsequent in date to this policy, the said insurance company shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent insurance had been made.

It is also agreed, that sheet-iron, tin-plate, tin-ware, iron-ware, salt, salts, saltpetre, alum, copperas, corn, and all kinds of grain, seeds, peas, beans, cider, beer, ale, porter, pork and bacon (in bulk), fruits of all kinds, whether preserved or otherwise; cheese, dry fish, vegetables and roots; pleasure carriages, household furniture, cutlery, skins and hides, musical instruments, looking-glasses, books and stationery and all other articles that are perishable in their own nature, are warranted by the assured free from all and every kind of average, unless general.

Average 15. Hemp, hempen yarns, bagging, bale rope, twine, flax, flax-seed, bread, soap of all kinds, teas, sugar, (brown, white and loaf) candy, tobacco, coffee, pepper, pimento, hats and bonnets of all kind, hard-ware, boots and shoes of all kinds, leather, brass-wire, block-tin, lead, copper (in sheets) copper and brass wares, castings of all kinds, are warranted by the assured free from average, under fifteen per cent., unless general.

Average 10. Bar-iron, steel, dry-goods, drugs and medicines (except those that are perishable in their own nature) flour, fish (in brine) candles, and corn meal (in barrels or casks) are warranted by the assured free, from average under ten per cent., unless general.

Average 7½. Liquors (foreign and domestic) glass, earthen, stone, and China wares, pork and beef (in barrels), tallow, lard and butter, in barrels or kegs, rosin, tar, pitch, are warranted by the assured free from average under seven and a half per cent. unless general.

It is also agreed that the assured shall not have the right to abandon, as for a total loss, unless the injury sustained be equivalent to fifty per cent. on the value of the interest hereby insured. It is also agreed, that the assured are not to abandon on account of the said———boat grounding, or being otherwise detained. The settlement of particular average, or partial losses, shall be adjusted by the mode of gross proceeds. In all cases of return premium, five per centum on the amount of premium, exclusive of policy fee, shall be retained by the assurers, and it is mutually agreed by the parties to this policy, that no part of the premium shall be abated or returned on account of any deviation which shall be made by the

owners, or their factors, from the present voyage—not liable for the barratry of the master or crew, in any event, or for leakage or molasses or other liquids.

Warranted by the assured free from any charge, damage or loss which may arise in consequence of engaging or having been engaged, in illicit or prohibited trade, at any time whatever.

In witness whereof the President and Directors of the Firemen's Insurance Company of Louisville have caused these presents to be sealed with their seal, signed by their President, and attested by their Secretary, in the city of Louisville, in the State of Kentucky, this twentieth day of December, 1846.

(Signed) H. Y. CURD, *President.*

Attest.

(Signed) P. B. ATWOOD, *Secretary.*

A true copy. (Signed) P. B. ATWOOD.

Endorsement.

Risks written on the Policy.

1847, March 22, on 3136 sacks corn, 31 barrels and 1 keg lard, and 315 sacks oats, hence to New Orleans on two flat-boats, No. 1 and 2, Galusha, master, $6380 00

Premium, ... $185 30

March 31, on 169 sacks corn from Owensboro, Ky., to New Orleans, per flat-boat No. 2, Galusha, master, $296 00

Premium, ... $7 88

A true copy. P. B. ATWOOD.

There are other endorsements which have been entered on the original policy, disconnected with the above transactions.

(Signed) P. B. ATWOOD.

The following letter, marked (A.), and annexed to the deposition of Galusha for the libellants, is further offered in evidence by the respondents.

Shipped, in good order and well conditioned by the Louisville Manufacturing Company, on account and risk of whom it may concern, on board the good flat-boats called the

whereof Galusha is master for the present voyage, now lying in the Ohio River, and bound for New Orleans, the following packages or articles, being marked and numbered as below; which are to be delivered, without delay, in like good order and condition, at New Orleans, (the dangers of the rivers and fire only excepted,) unto Foreman and Kenedy or to their assigns, he or they paying freight on the same, at the rate of as per agreement.

In witness whereof, the master or clerk of said boat hath affirmed

to three bills of lading, all of this tenor and date, one of which being accomplished the others to be void.

Dated at Louisville, this 22d day of March, 1847.

Various marks. 3136 sacks of corn.
31 bbls. & 1 keg lard.
315 sacks of oats.

(Signed) ARCHIBALD GALUSHA.

MESSRS. FOREMAN & KENNEDY:—

Gentlemen—Above please find bss. of 3136 sacks of corn for account of ourselves, 31 bbls. and 1 keg of lard for act. of W. J. McClure and Co., and 315 sacks of oats for act. of D. L. McClure, Esq. Debit McClure & Co. 70 cts. per. bbl. freight on the lard, and debit D. L. McClure, Esq., 8 cts. pr. bushel freight on the oats (706 bushels), to our credit.

Please have the boats and *every utensil* sold by Mr. Galusha, except the lines; have them brought back by him and delivered to our T. S. Foreman at Louisville.

Yours truly,
(Signed) J. C. BULL & Co.

Endorsement.

Bill of lading for flat-boat No. 2, Galusha, master.

Capt. Galusha arrived here to-day, April 12, '47, and reported the loss of his flat-boat—she having been run into and sunk by the steamer Memphis at Proffet's Island.

FOREMAN & KENNEDY,
New Orleans.

April 12th, '47.

(A.)

And afterwards at the February Term, to wit: on the 23d day of February, A. D. 1849, the following judgment was entered of record.

Judgment.

Friday, February 23d, 1849.

February Term, 1849. Present, Theo. H. McCaleb.

JOHN C. BULL *et al.* }
vs. } 6479.
R. S. & JNO. FRETZ. }

This cause having been fully argued and submitted, and the court after due consideration of the same, being satisfied that the libellants are entitled to full compensation for the loss sustained by them in consequence of the collision complained of, it is now ordered, ad-

judged and decreed, that the said libellants recover of the respondents, R. S. & John Fretz, the sum of $3753 45. Three thousand seven hundred and fifty-three dollars and forty-five cents, and all costs.

Petition of Appeal.

Filed Feb'y 28, 1849.

To the Honorable the Judge of the District Court of the United States for the District of Louisiana, in Admiralty sitting,

The petition of R. S. & J. Fretz respectfully represent, that in the matter of John C. Bull and others against them in admiralty, a final judgment was rendered in favor of the said complainants against these petitioners as respondents on the 23d day of February, 1849, for the sum of three thousand seven hundred and fifty-three $\frac{45}{100}$ dollars, in which judgment the said respondents are advised, and believe there is error which will work to them irreparable injury unless they can be relieved therefrom on an appeal.

Therefore, they pray for a suspensive appeal from said judgment, that the same be proceeded in according to law, and that the requisite surety being furnished, that the said appeal operate as a supersedeas, and stay of execution, &c. &c.

(Signed) ELMORE & KING,
Proctors for Respondents.

And thereupon at the same term, to wit, on the 28th day of February, A. D. 1849, the following order of appeal was forthwith entered of record.

February term, 1849. Wednesday, February 28th, 1849. Present, Hon. Theo. H. McCaleb.

JOHN C. BULL *et al.*
vs.
R. S. AND JOHN FRETZ. } Order of Appeal.

On motion of W. W. King, Esq., proctor for the respondents herein, and on his presenting on their behalf a petition of appeal from the judgment rendered against them on the 23d instant—

It is ordered that on the said respondents furnishing an appeal bond with good and sufficient security, in the sum of six thousand dollars, there be an appeal allowed them as prayed for, returnable to the next term of the Circuit Court of the United States for the Fifth Circuit and the District of Louisiana, and that in furtherance thereof all such proceedings take place as the law requires.

Whereupon, the following appeal bond was filed of record, to wit, on the 28th February, 1849.

352 Q.

Appeal Bond.

JOHN C. BULL *et al.* } In Admiralty. No. 6479.
vs.
R. S. AND J. FRETZ. }

Know all men by these presents, that we, R. S. and J. Fretz, who reside in the city of New Orleans, as principals:

And James J. Robson, and Richard H. Allen, merchants, residing in New Orleans, and there trading under the commercial firm of Robson and Allen, as sureties, are held and firmly bound unto John C. Bull, W. J. McClure, and Thomas S. Foreman, libellants, in the above-entitled suit, in solido, in the full sum of six thousand dollars; and for the faithful performance of the above obligation, we hereby bind ourselves, our heirs, executors and administrators, to them, their heirs, and assigns, as is witnessed by our hands and seals hereunto affixed at New Orleans, this the twenty-eighth day of February, A. D. eighteen hundred and forty-nine,

The conditions of the above obligation are as follows:—Whereas, the above-named respondents did by their proctors obtain an order of appeal in the above-named case, from the final judgment rendered by the honorable the United States District Court for the District of Louisiana, sitting in admiralty; said appeal being returnable to the next term of the Circuit Court of the United States for the District of Louisiana.

Now the condition of this obligation is such, that if the said respondents shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against the respondents, or that the same shall be satisfied by the proceeds of the sale of their property, if they be cast in the appeal, then this obligation to be void, otherwise to remain in full force, and the said sureties to be liable in the place of the said respondents.

(Signed) R. S. & J. FRETZ, [SEAL.]
(Signed) ROBSON & ALLEN. [SEAL.]

Signed, sealed, and delivered before
(Signed) ROBT. M. LUSHER,
Deputy Clerk U. S. Dist. Court.

Approval by the Judge on the foregoing Appeal Bond.

APPROVED.
(Signed) THEO. H. McCALEB,
U. S. Judge.

United States District Court for the Eastern District of Louisiana:—

I, N. R. Jennings, Clerk of the above-entitled court, do hereby certify, that the foregoing 92½ pages contain a true, faithful, correct and complete transcript of all the proceedings, process, pleadings,

documents and other matters on file and of record in a certain case in admiralty, wherein wherein John C. Bull *et al.* are libellants, and R. S. & John Fretz are respondents, No. 6479 of the Docket of said court.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the seal of the said court, at [SEAL.] the city of New Orleans, this eighteenth day of April, A. D. 1849, and of the Independence of the United States of America the 73d year.

N. R. JENNINGS,
Clerk.

(Signed) by ROBERT M. LUSHER,
Deputy Clerk.

UNITED STATES OF AMERICA:—Dist. Court of the United States for the Eastern District of Louisiana:—

I, Theodore H. McCaleb, United States Judge for the Eastern District of Louisiana, do hereby certify that N. R. Jennings, whose name is signed to the certificate on the reverse hereof, and above as clerk of the District Court of the United States for the Eastern District of New Orleans, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

I further certify, that Robt. M. Lusher, who signed said N. R. Jennings' name as clerk, was at the time of signing the same the duly appointed and qualified deputy clerk of said N. R. Jennings.

Given under my hand and seal, at New Orleans, in the Eastern District of Louisiana, this 19th day of April, A. D. 1849.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. Dist. Judge Eastern District of Louisiana.

UNITED STATES DISTRICT COURT—DISTRICT OF LOUISIANA.

Sitting in Admiralty.

JOHN C. BULL *et al.*
vs.
R. S. & J. FRETZ. } No. 6479.

THE PRESIDENT OF THE UNITED STATES—

To John C. Bull, W. J. Clure and Thos. S. Foreman, libellants in the above-entitled suit—

GREETING:—You are hereby cited and admonished to be and appear at a Circuit Court of the United States for the 5th Circuit and District of Louisiana, to be holden at New Orleans on the fourth Monday of April, 1849, pursuant to an order of appeal granted to

R. S. & John Fretz, in a certain case in admiralty, wherein you are libellants, and R. S. & John Fretz are respondents, to show cause, if any there be, why the decree rendered against the said respondents, and in your favor, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal, this 24th day of March, A. D. 1849, and in the 73d year of American Independence.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

ENDORSED ON CITATION OF APPEAL.

Marshal's Return.

Received March 24th, 1849, and on the same day served copy of the within citation of appeal, on L. Hunton, Esq., in person, at his office, New Orleans.

(Signed) W. H. BUTLER.

Returned into court March 24th, 1849.

(Signed) ROBT. M. LUSHER,
Deputy Clerk U. S. Dist. Court.

And afterwards, to wit, on the 5th day of January, 1850, the following entry was made on the minutes of said court.

JOHN C. BULL *et al.*
vs.
R. S. AND JOHN FRETZ. } 1832.

On motion of L. Hunton, Esq., it is ordered that this cause be assigned for trial for Friday the 11th inst, at 10 o'clock.

And afterwards, to wit, on the 11th day of January, 1850, the following entry was made on the minutes of said court.

JOHN C. BULL *et al.*
vs.
R. S. AND JOHN FRETZ. } 1832.

This cause having been assigned for this day, was taken up for trial upon the transcript of the record from the United States District Court, before his honor John McKinley, presiding judge of this court—L. Hunton, Esq., appearing for appellees, and King, Esq., for the appellant. When, after hearing evidence and argument of counsel, the same was submitted to the court, and taken under advisement.

And afterwards, to wit, on the 11th day of January, 1850, the following admissions were filed of record in the clerk's office of said court.

JOHN C. BULL *et al.*
vs.
R. S. FRETZ AND JOHN FRETZ. } U. S. C. C.

On the trial of this cause it was admitted by the proctors for libellants that the prices of corn and oats, extracted from price currents, and offered in evidence in the District Court, and read in evidence in the Circuit Court, were taken from the New Orleans price currents, and were made for that place.

L. HUNTON,
For Libellants.

And afterwards, to wit, on the 11th day of January, 1850, the following testimony was admitted and filed of record in the clerk's office of said court.

JOHN C. BULL *et al.*
vs.
R. S. AND J. FRETZ, Appl't. } U. S. Circuit Court, 5th Circuit and Eastern Dist. of Louisiana.

By consent of parties on the trial of this cause, the following minute of the oral testimony given in the lower court is admitted in evidence.

Cornelius B. Payne, a witness for respondent, testified that the price of corn about the Ohio River in March, 1847, varied from twenty-five to forty cents per bushel.

R. W. Walker, for respondents, testified that the price of corn varied from thirty to thirty-five cents per bushel. The price of sacks in New Orleans sixteen cents—corn in sacks from forty to forty-five cents, and oats in sacks at thirty cents.

J. W. GURLEY,
Clerk.

Jan'y 11, 1850.

And afterwards, to wit, on the 11th day of January, 1850, the following testimony was taken in open court, and filed of record in the clerk's office of said court.

JOHN C. BULL *et al.*
vs.
R. S. AND JNO. FRETZ, Appl't.

W. S. Scott, for appellee. Have resided in Louisiana about Prophet's Island for a number of years. The price of western produce, flour, corn, lard, &c., is regulated on the river above New Orleans, by the price in New Orleans—being generally about the same—generally speaking, corn up the river commands as high a price as in New Orleans. I do not think a flat-boat of corn in sacks could be purchased any cheaper above Prophet's Island than in New Orleans.

Never purchased any corn in New Orleans for my plantation. I obtained my knowledge of the price of corn in New Orleans, from the prices current. I presume the prices current are made out by the wholesale prices. I have purchased a whole flat-boat load for my plantation. When I resided above the city I was planting.

WM. S. SCOTT.

And afterwards, to wit, on the 11th day of January, 1850, the following testimony was taken in open court, and filed of record in the clerk's office of said court.

J. C. BULL *et al.*
vs.
R. S. AND JNO. FRETZ, Appl't.

Thos. G. Morgan, sworn for appellee, says—He has resided in Baton Rouge some 18 or 20 years. Has never been a planter; thinks flour and other provisions can be procured cheaper in New Orleans than in Baton Rouge; never purchased corn in New Orleans while residing at Baton Rouge, and does not know what difference, if any, there was in price at those places. Prophet's Island is about 20 miles above B. Rouge. Generally sent to N. Orleans for flour for his family use. I was att'y at law, and practising during the time I resided in Baton Rouge, and was part of the time Judge of the District Court. Knows nothing of the price of corn at or near Prophet's Island in the year 1847. Resided in the city of New Orleans since 1841, and have no knowledge of the price of corn or other produce on the river since that time. Thinks the price of breadstuffs rose in value about the time of what was called the famine in Ireland, in consequence of the extensive exports to Europe. It frequently occurs that corn in sacks is shipped from New Orleans up the river to planters.

T. G. MORGAN.

And, afterwards, to wit, on the 11th day of January, 1850, the following testimony was taken in open court, and filed of record in the clerk's office of this court.

J. C. BULL *et al.*
vs.
R. S. AND J. FRETZ, Appl't.

1832. U. S. Circuit Court.

George Tillinghast, being duly sworn in open court, says:—I bought a load of corn on the Wabash in the month of February, 1847, for twenty cents a bushel in bulk; the value of sacks that year I cannot recollect; sacks varied in price from ten to thirty cents, thirty was a very extreme price—they sold for that price, I think, in April. I have been trading in corn a great many years on the Wabash—corn is worth something more on the Ohio than on the Wabash.

Cross-examination.

Does not know the current value in sacks in the month of March, 1847, at Louisville.

G. TILLINGHAST.

And afterwards, to wit, on the 14th day of January, the following decree was rendered and entered upon the docket of said court.

Judgment.

JOHN C. BULL *et al.*
vs.
R. S. AND JOHN FRETZ, Appl'ts.

This cause having been argued on a former day by L. Hunton, Esq., for appellees, and W. W. King, Esq., for appellants, and submitted to the court, and the court having maturely considered the same on the law and the evidence, doth now order, adjudge and decree that the judgment of the District Court be affirmed, with costs in both courts.

Judgment rendered 14th January, 1850.
" signed 20th January, 1850.

J. McKINLEY,
Per J. W. GURLEY,
Clerk.

And afterwards, to wit, on the 25th day of January, 1850, the following petition was filed in the clerk's office of said court.

Petition for Appeal.

To the honorable the Circuit Court of the United States for the Fifth Circuit, holding session in New Orleans, in and for the Eastern District of Louisiana, in admiralty sitting.

The petition of R. S. Fretz and J. Fretz, respectfully represent that a final judgment was rendered against them in this honorable court on the 14th day of the present month, in the case of John C. Bull and others, libellants, against the said R. S. Fretz and J. Fretz, respondents. That said judgment was for over two thousand dollars. That respondents are advised and believe there is error in said judgment, which will work to them irreparable injury, unless they can be relieved therefrom by an appeal to the Supreme Court of the United States.

Wherefore they pray that the annexed bond being considered, that they be allowed an appeal from said judgment, which appeal shall operate as a supersedeas—that the same be made returnable according to law, and proceeded with in all other respects as the law directs, &c., &c., &c.

ELMORE & KING,
Proctor for Resp'ts.

And afterwards, to wit, on the 24th day of January, 1850, the following bond was filed in the Clerk's Office of said Court.

Know all men by these presents, that we, R. S. & J. Fretz, principal, and J. J. Robson as surety, are held and firmly bound unto Jno. C. Bull, Wm. J. McClure and Thomas S. Foreman, libellants, in the full and just sum of six thousand dollars, to be paid to said John C. Bull, Wm. J. McClure and Thomas S. Foreman, their certain attorneys, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals, and dated this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and fifty.

Whereas, lately at a Circuit Court of the United States, Fifth Judicial Circuit, holding session in and for the Eastern District of Louisiana, in a suit depending in said Circuit Court, wherein John C. Bull *et al.* were libellants, and R. S. & John Fretz were respondents, judgment was rendered against the said respondents, and the said respondents, R. S. & J. Fretz, having obtained an appeal, to reverse the judgment in the aforesaid suit, returnable to the next term of the Supreme Court of the United States, to be holden at Washington the 1st Monday of December next, 1850—

Now the condition of the above obligation is such, that if the said R. S. and J. Fretz shall prosecute their appeal to effect, and satisfy such judgment as may be rendered, and answer all damages and costs if they fail to make the appeal good, then the above obligation to be void, else to remain in full force and virtue.

R. S. FRETZ & BRO. [SEAL.]
J. J. ROBSON. [SEAL.]

Sealed and delivered in presence of

J. W. GURLEY.

Surety justified in open court this 25th day of January, 1850.

J. W. GURLEY, *Clerk.*

And afterwards, to wit: on the 1st day of February, 1850, the following entry was made on the minutes of said court.

J. C. BULL *et al.*, Appellees,
vs.
R. S. & JOHN FRETZ, Appl'ts. } 1832.

On motion of W. W. King, Esq., proctor for appellants, and on filing a petition representing that said appellants felt aggrieved at the decree rendered herein on the 26th January, 1850, and praying for an appeal returnable to the next term of the Supreme Court of the United States, it is ordered that an appeal be and the same is hereby allowed to the said respondent and appellants, returnable to the next term of the Supreme Court of the United States on the said respondents furnishing their bond, with J. J. Robson as surety, in